

# Exhibit 3

IN THE UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - -  
IN THE MATTER OF

IN RE: LEHMAN BROTHERS HOLDINGS INC., ET AL.,  
Debtors.

- - - - -  
DEPOSITION OF VITTORIO PIGNATTI

VOLUME I

Monday, November 16th, 2015

AT: 3:30 p.m.

Taken at:

Hogan Lovells  
50 Holborn Viaduct  
London  
EC1A 2FG  
London  
United Kingdom

CONFIDENTIAL

Court Reporter:

Chris Lang  
Accredited Real-time Reporter

1 A P P E A R A N C E S

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9 Appearing for Dr Thomas Marsoner:

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16 Appearing for the Debtors:

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21 NOTARY: MICHELLE SCOTT-BRYAN

22 VIDEOGRAPHER:

23 WENDY VINER  
24 Videographer  
25

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1 Monday, November 16th, 2015

2 (3:40 p.m.)

3 THE VIDEOGRAPHER: Here begins the videotaped deposition of  
4 Vittorio Pignatti in the matter of, In Re: Lehman  
5 Brothers Holding Inc., et al., in the United States  
6 Bankruptcy Court Southern District of New York case  
7 number 08-13555SCC. Today's date is November 16, 2015  
8 and the time is 3:40 p.m. The video operator today is  
9 Wendy Viner. This video deposition is taking place at  
10 Hogan Lovells, 50 Holborn Viaduct, London EC1 UK.  
11 Counsel would you please identify yourselves and state  
12 who you represent.

13 MR. JOHNSON: Shane Johnson from Hogan Lovells for Dr. Thomas  
14 Marsoner.

15 MS. ALVAREZ: Denise --

16 MR. VAN TOL: Pieter Van Tol from Hogan Lovells -- sorry  
17 Denise -- for Dr. Thomas Marsoner.

18 MS. ALVAREZ: Sure, sorry about that.

19 Denise Alvarez from Weil, Gotshal & Manges for  
20 Lehman Commercial Paper Inc. and Lehman Brothers  
21 Holdings Inc.

22 MR. HORWITZ: Maurice Horwitz from Weil, Gotshal & Manges  
23 for Lehman Brothers Holdings Inc and Lehman Commercial  
24 Paper Inc.

25 THE VIDEOGRAPHER: Could I ask the notary to please swear in

1 the witness and we can proceed.

2 VITTORIO PIGNATTI

3 having been Sworn testified as follows:

4 BY MR JOHNSON:

5 Q. And Mr. Pignatti, I wanted to start with your work  
6 experience. So when did you begin working at Lehman  
7 Brothers?

8 A. March 1989.

9 Q. March 1989?

10 A. 1989 and I finished working for the liquidator of  
11 Lehman Brothers in, I think it was April 2009.

12 Q. And what jobs did you have whilst you were at  
13 Lehman Brothers?

14 A. I started as head of investment banking for Italy  
15 then I was promoted in 1998, relocated to London and  
16 became the head of mergers and acquisitions advisory for  
17 Europe and then at the end of 2006, or some time in  
18 2006, I became Vice Chairman, maybe the year before, but  
19 I was assigned to be responsible for private equity for  
20 non-US.

21 Q. Okay. And what were your responsibilities in those  
22 positions?

23 A. In the last position I was responsible for  
24 non-listed balance sheet investments and Lehman Brothers  
25 private equity funds, which included the buy out funds,

1 the real estate funds, the credit funds, the funds of  
2 funds, and so on.

3 Q. Now, could I ask that Mr. Pignatti be given the  
4 2007 annual report, please. If you look at this, it is  
5 the 2007 Lehman Brothers annual report and if you see in  
6 the bottom right-hand corner it says Marsoner and then  
7 has numbers after it?

8 A. Mm-hm.

9 Q. If you turn to page 606, please.

10 MS. ALVAREZ: I just want to clarify, are we using the same  
11 exhibit that was marked in Peter Sherratt's deposition?

12 MR. JOHNSON: Yes.

13 DENISE ALVAREZ: Okay.

14 A. Six.

15 MS. ALVAREZ: Are you marking it as exhibit 1 as it is a new  
16 deposition?

17 MR. JOHNSON: Using the same exhibit marks.

18 MS. ALVAREZ: Okay, what was this in Peter Sherratt's  
19 deposition?

20 THE COURT REPORTER: Exhibit 1.

21 MS. ALVAREZ: Okay.

22 BY MR JOHNSON:

23 Q. Do you see your name listed --

24 A. Mm-hm.

25 Q. -- in the column "other officers"?

1 A. Yes.

2 Q. And is that because you were an officer of Lehman  
3 Brothers Holdings Inc.?

4 A. Yes. Here it says Lehman Brothers Inc. I don't  
5 see the "Holdings". I say Lehman because it was a very  
6 complex global organization. The various bookings or  
7 transactions, contracts and so on, was not under my  
8 domain, but it was really done by technical people on  
9 the legal and tax side.

10 Q. Sure. And could you actually turn back on that  
11 same page.

12 A. Mm-hm.

13 Q. And identify other people that you worked with at  
14 Lehman Brothers?

15 A. If you give me the page again.

16 Q. 606.

17 A. Dick Fuld, Jasjit Bhattal, Erin M Callan. I can  
18 tell you who I didn't work with, which is probably  
19 easier. Given that I spent, by 2007, 18 years in the  
20 group there weren't that many people that I didn't work  
21 with.

22 Q. Okay.

23 A. I didn't deal much with Burton, Gatto, Robatyn,  
24 Safreno, Taussig.

25 Q. Everyone else listed you worked with?



1 A. Between senior management and other officers, the  
2 board members, I didn't have much relationship with  
3 other than two.

4 Q. Okay. And to your understanding was it common for  
5 members of Lehman Brothers' leadership to serve multiple  
6 roles?

7 A. Absolutely.

8 Q. Now, how do you know Dr. Thomas Marsoner?

9 A. I know him because when he joined Lehman Brothers  
10 I was one of the managing directors of the firm, so  
11 I participated in the hiring of that team, because he  
12 didn't come on his own, he came with a group from  
13 Soloman Brothers.

14 Q. And did he work as an adviser to Lehman Brothers at  
15 a certain point?

16 A. Yes, after many years as an investment banker  
17 within the ranks of the firm he sort of moved on to be  
18 an adviser.

19 Q. And are you aware of his advisory agreements?

20 A. I am aware of his advisory agreements for as long  
21 as I was the person responsible for any adviser to the  
22 investment bank.

23 Q. Okay. And specifically were you involved in the  
24 negotiation of Dr. Marsoner's 2002 agreement?

25 A. Yes. So I became, I was in charge of that division

1 from 1998 until 2006.

2 Q. So that means you were involved in the 2004  
3 agreement as well?

4 A. Yes.

5 Q. And did you sign both of these agreements?

6 A. Yes, I think I did.

7 Q. Did you sign both on behalf of Lehman Brothers  
8 Europe Limited?

9 MS. ALVAREZ: Objection to form.

10 Q. You can still answer.

11 A. Okay.

12 Q. Do you want me to repeat the question?

13 A. If I signed on behalf of Lehman Brothers?

14 Q. Europe Limited?

15 A. I think so, but it must say, I mean the contracts  
16 are available, so if it says Lehman Brothers. I would  
17 be given, if it was companies on whose board I sat,  
18 within Lehman I would sign because I had powers of  
19 attorney, jointly with some other officers of the firm,  
20 or individually for some contracts. If it wasn't  
21 I would be told, you know, this one had better go into  
22 this company, this one had better go. They would tell  
23 me whether I had specific powers or I wouldn't sign it  
24 at all, it would be someone else who was actually on the  
25 board of that company.

1 Q. Okay. To your understanding why did Lehman  
2 Brothers want to hire Dr. Marsoner as an adviser?

3 MS. ALVAREZ: Objection to form.

4 A. Mr. Marsoner continued his previous involvement, so  
5 it was an evolution, it wasn't a hiring process, which  
6 was quite normal with senior people who departed a full  
7 time position at Lehman, they seldom -- unless they went  
8 to work for a competitor, they were offered a choice to  
9 stay on as an adviser, some with retainers, you know, we  
10 had a lot of freedom on how to calibrate their  
11 involvement.

12 Q. Did Dr. Marsoner have certain expertise?

13 MS. ALVAREZ: Objection to form.

14 A. Yes he did. By sector and by geography. He had  
15 spent almost his entire working career dealing with  
16 Germany and Austria and financial institutions, which  
17 gave him a, for a firm that was not particularly strong  
18 in that part of the world, considerable senior hedge in  
19 terms of relationships and understanding of situations  
20 that were not obvious, especially in situations of work  
21 outs or complicated deals.

22 Q. And what about F1?

23 A. F1 was a complicated deal. So he met those  
24 criterias and there were German banks involved.

25 Q. And is it correct that you were a contact person

1 under the 2004 agreement?

2 MR. HORWITZ: Objection to form.

3 A. Absolutely.

4 Q. And what did this entail?

5 A. This entailed that any decision with -- these  
6 contracts were rather general in terms of which  
7 transactions would be covered and so on, and I was the  
8 person on behalf of the firm where these decisions would  
9 be centralized; what was in it, the exact terms, we used  
10 to give a grade in terms of how much the person would be  
11 entitled to be paid and then, you know, for the  
12 avoidance of doubt and we would interpret on a case by  
13 case basis.

14 Q. Could you please look at Dr. Marsoner's motion.

15 MS. ALVAREZ: Do you have extra copies? We didn't bring  
16 Sherratt's deposition exhibits with us -- we just  
17 happened to have an extra copy of the 2007 annual  
18 report -- since this is a separate deposition. Thank  
19 you so much. And this is exhibit?

20 THE COURT REPORTER: It should say on the front. Exhibit --

21 A. 4.

22 BY MR JOHNSON:

23 Q. Could you turn to exhibit C, please.

24 A. Okay.

25 Q. And then page 22, if you see at the top, page 22 of

1 42.

2 A. Okay. Spotted it. 22, yes.

3 Q. You see listed February 13, 2004?

4 A. Mm-hm.

5 Q. And section 3, if you turn the page.

6 A. Mm-hm.

7 Q. Entitled "compensation payable to the consultant".

8 A. Yes.

9 Q. Could you explain this section of the agreement?

10 A. The section of this agreement, this was the second  
11 one. There was a prior one so, you know, this was  
12 stepping in. So we had decided to take part of his  
13 time, so we paid an up front fee and then we paid  
14 a quarterly fee and then went through the specifics of  
15 the transactions that were covered and then, if I am  
16 right, we had a possibility to bring under this  
17 contract, subject to my green light, I think, other  
18 things. So at that time we had the role in Austria, and  
19 Germany, Oyagi (sic) was a distressed bank, Telekom  
20 Austria were two transactions which eventually, I think,  
21 all of them got done while the Donatzeinmagi (sic), as  
22 I can recall, didn't happen.

23 Q. And if you turn back to the page before,  
24 section 1D.

25 A. Yes.

1 Q. Is that the section you referenced? I believe you  
2 referenced --

3 MS. ALVAREZ: Objection to form.

4 Q. -- that there were other transactions?

5 A. Yes, absolutely. He would attend. I mean I was,  
6 I had hundreds of people under me, so I was following,  
7 as the person responsible of the advisory mergers and  
8 acquisitions, I was following all of the transactions.  
9 But if I can recall, Telekom Austria was under my direct  
10 watch, the Republic of Austria, maybe, 50 percent, the  
11 BAWAG, partially, zero personal involvement, but I would  
12 monitor and ask the various teams whether he was doing  
13 his job.

14 Q. Mm-hm.

15 A. You know, whether he was attending the meetings.  
16 These meetings would probably be mostly in Austria,  
17 Germany and so on so I wouldn't attend every single  
18 meeting but I get through the Monday morning meeting  
19 where each of the teams who kind of report back, find  
20 out, and then I would speak with Thomas whenever needed.  
21 I mean sometimes it would be three times a week,  
22 sometimes it would be every two weeks.

23 Q. And how is his pay determined?

24 A. His pay was determined through negotiations with  
25 him and then an approval by the committee of investment

1 banking which was Skip McGee and another number of other  
2 people.

3 Q. And that included you?

4 A. That included me, yes. I was the proponent, so we  
5 sat through and I had, you know, to approve any  
6 expenditure, any commitment of the firm I would report  
7 on and seek approval prior to signing. But he was not  
8 the only consultant to the group.

9 Q. Okay, what would happen when one of the agreements  
10 was no longer in effect?

11 A. Normally, if it was no longer in effect we would  
12 have a moment of truth as to whether the person was, and  
13 I am talking in general not about Mr. Marsoner  
14 specifically, I would establish whether the team felt,  
15 or parts of the team that were interacting with the  
16 senior adviser, would be interested in maintaining that  
17 relationship and likewise I would check with the person  
18 who was giving us the advice on whether they had  
19 interest in providing the same level of commitment,  
20 a higher level of commitment or a lower level of  
21 commitment. So we would start the new contract. If  
22 there was no change, we would roll it over.

23 Q. Could you please hand Mr. Pignatti the October 13,  
24 2015 email.

25 THE COURT REPORTER: That is exhibit 7.

1 MS. ALVAREZ: Sherratt exhibit 7?

2 THE COURT REPORTER: Yes.

3 MS. ALVAREZ: Do you have an extra copy?

4 MR. JOHNSON: I do not.

5 MS. ALVAREZ: What is the Bates?

6 MR. JOHNSON: LEH58.

7 MS. ALVAREZ: Those exhibits were marked for Mr. Sherratt's  
8 deposition so we didn't know the numbers would carry  
9 over into a new deposition, so we don't have a copy.

10 MR. JOHNSON: I might have an extra copy.

11 MS. ALVAREZ: Shall we go off the record for two minutes.

12 MR. JOHNSON: Yes, let's go off the record.

13 THE VIDEOGRAPHER: We are going off the record. The time is  
14 4 p.m.

15 (4:00 p.m.)

16 ((Break taken))

17 (4:01 p.m.)

18 THE VIDEOGRAPHER: We are back on the record. The time is  
19 4: 01 p.m.

20 BY MR. JOHNSON:

21 Q. And Mr. Pignatti, you see this October 13, 2005  
22 email, from you to Jonathan Rouner, copying Christian  
23 Meissner?

24 A. Mm-hm.

25 Q. Could you explain this email, please?



1           A. Sure. Christian Meissner had become, I can't  
2           remember what he was, he was either the head of Germany  
3           or of investment banking at the time, and one of his  
4           team members, a managing director, Mr. Rouner, interacts  
5           with Mr. Marsoner, as I had encouraged all of the teams  
6           to use our senior advisers, relaying to me any specific  
7           new project and so on. But they could just get on with  
8           it, they wouldn't have to come to me and I wouldn't go  
9           on every single thing. So here I am writing, well, the  
10          issue is did they do it? No. I mean, people get  
11          carried away, one is in Germany, one is in Austria and  
12          so on, and I find myself a few weeks behind. So I would  
13          spend a day a week tracking the utilization of all of  
14          the senior advisers and making sure that I wouldn't find  
15          myself in front of a fait accompli of someone who had  
16          agreed something and so on. So this is a classic email  
17          clarification to a team leader where I am saying  
18          I received the call directly from the senior adviser,  
19          Mr. Marsoner, who says that he could get us into  
20          a situation with a certain client, who would hire us  
21          through his good auspices. Do we agree (a) that we want  
22          to do it, so is this the type of client that you want,  
23          you know, because he would be responsible for that  
24          segment, sector, whatever. And if so, please guide me  
25          on the terms. You know, how important? Is this a very

1 visible mandate? We are talking advisory here, not  
2 capital, this is advisory, which in Europe, unless we  
3 have a million people, are not necessarily easy to get  
4 when you go below the top ten clients per each sector  
5 and then you use consultants to help you monitor.

6 Q. And you start by saying: "Thomas' contract with me  
7 has expired."

8 A. Mm-hm.

9 Q. Is that correct?

10 A. Absolutely.

11 Q. But you were still covering his expenses?

12 A. Yes, on a deal by deal. So whenever he came to me  
13 and said "I am working with your guy in Austria on this  
14 possibility", and so on, "do you approve?", you know,  
15 verbally, and then let's see. I can't remember, because  
16 I had a lot of them, I had almost 300 people in the  
17 advisory group and everything.

18 Q. Mm-hm.

19 A. And I don't know how many advisers. I can't  
20 remember what the situation of Thomas was; whether he  
21 wanted to do less or more, I truly cannot remember. So  
22 I didn't have enough to go to our investment committee  
23 and say yes, we have another, you know, Dr. Marsoner  
24 wants to commit for the next several years on this  
25 specific economics and I didn't know, maybe I didn't

1 have enough traction from my teams to say yes, because  
2 we had a budget we could spend so much on advisers. So  
3 if we took one, we wouldn't have another one to maybe  
4 start the new vertical, maybe to cover another country.

5 THE COURT REPORTER: Sorry, could you repeat the last bit?

6 A. We would have to decide as a team, the advisory M&A  
7 team, how to spend the budget, being the person in  
8 charge, it was in the end my duty to present the annual  
9 budget, but also to manage the budget. So there were  
10 times when the level of activity with one adviser did  
11 not warrant a contract with a fixed amount, and so on.  
12 So we would, say, use as a guideline the past but on  
13 specific transactions you have to come to me and I will  
14 sign off and sort of rejuvenate the old agreements with  
15 the caveat that it may be without a fixed amount, with  
16 a cap, you know, depending deal by deal.

17 I preferred, generally, to have contractors on,  
18 because I had so many of them, just to remember what you  
19 were doing with one or the other but it was, in the case  
20 of Thomas and a few others, after a decade together we  
21 could live with, sort of a play it by ear system. But  
22 I would always go back to the person within Lehman, sort  
23 of full time Lehman MD, and check that the work was  
24 being done, that it was a realistic request.

25 Q. And so when his agreement expired how would his pay

1 be determined?

2 A. His pay would be determined the way that I do it  
3 with this email, and I don't know if Jonathan responded  
4 to me, but I would say these are the guidelines, this is  
5 the deal, do you want me to confirm to the adviser that  
6 he is on and, if so, within the usual sort of Lehman  
7 scale, which I, for the avoidance of doubt repeat to  
8 him; where would you place his services? Because this  
9 would come off the bonus pool. So if we were introduced  
10 to a deal by someone -- someone, by one of the senior  
11 advisers -- we would use the net revenues for the team,  
12 not the gross, so it was a team cost, it wasn't just  
13 money that was flying around. So I wanted the buy in  
14 not to be told at the end of the year I made  
15 USD 10 million. Sorry, it is USD 8 million, because two  
16 went to -- so they tended to forget on a personal basis  
17 the expenses associated with the deals.

18 Q. Do you know Peter Sherratt?

19 A. Of course.

20 Q. Was he involved in determining Dr. Marsoner's pay?

21 A. No.

22 Q. And changing topics, are you familiar with  
23 Cerberus' acquisition of BAWAG?

24 A. Yes.

25 Q. Was Dr. Marsoner involved in that transaction?

1 A. Yes.

2 Q. What was his involvement?

3 A. His involvement was that he knew BAWAG, being his  
4 job. He was the head of Lehman FIG practice, Financial  
5 Institutions Group, and knew all of the Austrian banks  
6 and the German banks and when Cerberus -- actually  
7 I can't remember who came up with the BAWAG idea,  
8 whether it was us or Cerberus. But any way, internally  
9 we were not equipped to provide advice on a complicated  
10 work out. This bank was distressed and the idea was to  
11 buy it. But it was in a form of bankruptcy and so on,  
12 so it required a lot of local knowledge that we didn't  
13 possess post Mr. Marsoner's departure as a full time MD.  
14 And, you know, my decision at the time when he decided  
15 to depart was that Austria was not that strategic, so,  
16 that it was cheaper to have someone like him stay part  
17 time than to start again and have a full time person  
18 for -- you know, of course when you make these decisions  
19 and all of the business comes from Austria all of a  
20 sudden.

21 Q. And was he paid for this work?

22 A. For BAWAG?

23 Q. Yes.

24 A. Yes, I think he was.

25 Q. Now, were you involved with Lehman's F1 investment?

1           A. I was involved with Formula 1 in what I would not  
2           call an investment. As part of my duties Lehman Europe  
3           would bring to me, as head of advisory and on the  
4           industry groups, all of the busted loans, which ended up  
5           not as a fixed income work out, but as a sale of the  
6           whole company. So among those when Kirch, the media  
7           group, went bankrupt, Peter Sherratt on the legal side  
8           and a hundred law firms and so on helped us on a huge  
9           exposure from the fixed income division and other parts  
10          of the firm to grab as much collateral as we could.  
11          Then they brought it to me to manage, you know, because  
12          this collateral was shares in companies with board  
13          sheets that required decision making. Among those one  
14          of the few that actually turned out to be valuable was  
15          the Formula 1. This is out of the Kirch group. So  
16          I ended up following Formula 1, not because the firm had  
17          made an investment but because the firm had lent money  
18          to Kirch, who had pledged a stake in Formula 1 to three  
19          banks, one of which was a German bank, and was getting  
20          Thomas' assistance on that relationship; BLB, the  
21          Berliner Landesbank, JP Morgan and us. Ended up with  
22          slightly more the Germans and then JP and us the same  
23          sort of thing, with a stake which theoretically was the  
24          largest, so the controlling stake in Formula 1, but that  
25          opens a whole other chapter because the "minority

1 shareholder" was actually calling all of the shots, it  
2 was Bernie Ecclestone.

3 Q. What time period was this?

4 A. I have lost my -- but it should be public  
5 information, I am sure you have all of the documents.  
6 Unfortunately it wasn't the only work out that I did --

7 Q. Sure.

8 A. -- for Lehman, especially that vintage was the same  
9 time as Meridian Hotels and Tele Columbus, I got all of  
10 them, but I didn't count them as investments.

11 Q. And who else did you work with on F1?

12 A. On F1 I had a team of Germans. The Patricks,  
13 Patrick Schmitz-Morkramer, who then had a career at  
14 Lehman and became the head of Germany, and Patrick  
15 Bierbaum, who maybe at the time was VP and senior  
16 executive director who were working for me on this, plus  
17 there was a supervision. I mean I think at the peak our  
18 exposure was 700 million Euros, which for Lehman in  
19 Europe was a lot of money, with no cash flow. So the  
20 collateral was not yielding anything. So -- I followed  
21 it for as long as I was head of mergers and  
22 acquisitions, so until 2006. But not at the time when  
23 it became "an investment". Okay, it wasn't really  
24 an investment, but it was a sale where Lehman decided  
25 that, you know, they were happy to continue to hold

1 an exposure to the asset rather than selling completely.  
2 So at that time of the decision I was no longer dealing,  
3 I was on the asset management side running private  
4 equity all of the funds and so on, with a different  
5 reporting line. But I remained the vice chairman of the  
6 firm, a member of the operating committee, and sort of  
7 the go to guy when opinions were mixed on what to do.  
8 You know, especially if it was assets that I had  
9 something to do the year before, because I think we are  
10 talking about a year after I stepped down from M&A,  
11 which went under Christian Meissner and others. But  
12 I think here it was Peter Sherratt on the legal side,  
13 Jeremy Isaacs and Christian.

14 Q. And were there any other significant F1  
15 transactions you participated in?

16 A. There were many other things associated, yes, to  
17 Formula 1.

18 Q. Was one of them after CVC Capital Partners bought  
19 a controlling interest?

20 MS. ALVAREZ: Objection to form.

21 A. No. The CVC acquisition, I was no longer the head  
22 of mergers and acquisitions at that time, I had already  
23 moved to the other. So I was involved in the sense  
24 I was on the investment committee of the firm and on the  
25 operating committee of Europe, so I would be made aware



1 and asked, but it was not my decision to do something or  
2 not to do.

3 Q. Was Dr. Marsoner involved?

4 MS. ALVAREZ: Objection to form.

5 A. Yes he was. I am aware, because at times we  
6 interacted because I was in a senior position at the  
7 firm and because I had an affiliation with that specific  
8 transaction in the past.

9 Q. Do you know how he became involved?

10 A. He became involved because he continued after me,  
11 he negotiated other agreements with Christian Meissner  
12 and therefore sort of continued in that role. And I was  
13 also involved as a member of the investment committee  
14 because I need divestiture or investment on the firm  
15 would go through it, but it was really a yes or no type  
16 of opinion, not, I was not the proponent, the one who  
17 was saying let's buy 30 percent of Formula 1.

18 Q. And did you request Dr. Marsoner's advice after CVC  
19 Capital Partners bought a controlling interest?

20 MS. ALVAREZ: Objection to form.

21 A. After they bought? After they bought I do not  
22 recall whether I had any involvement with, you know,  
23 Thomas on this specific subject. This would be, and  
24 remind me of the date, 2000 and?

25 Q. The dates of when CVC Capital Partners --

1 A. Yes.

2 Q. I was referring to late 2005/early 2006.

3 A. I don't recall.

4 MS. ALVAREZ: May we -- I don't mean to interrupt you Sir,  
5 I am sorry.

6 A. Sure.

7 MS. ALVAREZ: I would just like to know what you are looking  
8 at?

9 A. What I am looking at is I have made myself some  
10 notes as to the dates, the things, because I am bad with  
11 dates.

12 MS. ALVAREZ: Okay. I think what we need to do is put the  
13 notes aside and you should testify based on your memory  
14 and to the best of your recollection.

15 A. As you wish.

16 MR. VAN TOL: This is Pieter Van Tol. That is not a proper  
17 instruction. The witness can use whatever he likes. If  
18 you need to mark it as an exhibit.

19 A. It is actually not helping much, I can't recall the  
20 dates, I didn't write the right stuff.

21 MR. VAN TOL: Okay, I appreciate that. I am objecting to  
22 that instruction, it is not a proper instruction, you  
23 don't represent the witness. He can look at whatever he  
24 looks at to refresh his recollection.

25 MS. ALVAREZ: Okay. Then I would request a copy of what he

1 is looking at.

2 BY MR. JOHNSON:

3 Q. Can I have you look at the supplemental declaration  
4 of Dr. Thomas Marsoner.

5 THE COURT REPORTER: That is exhibit 6.

6 MS. ALVAREZ: Exhibit 6 to Peter Sherratt's deposition.

7 What exhibit was that to his motion?

8 MR. JOHNSON: It was a supplemental declaration.

9 MS. ALVAREZ: Okay. Are you going to point him to his  
10 letter?

11 MR. JOHNSON: I am going to point him to his affidavit.

12 MS. ALVAREZ: The one he submitted to the court.

13 A. Mm-hm.

14 MR. JOHNSON: Do you recognize --

15 MR. HORWITZ: Just a minute, I have a copy of that.

16 BY MR. JOHNSON:

17 Q. Do you see your letter dated January --

18 A. Yes, yes, yes, yes, then I am getting the dates.

19 Q. Do you see the --

20 A. Yes.

21 Q. Well, just one second. Do you see the fifth  
22 paragraph?

23 A. Five, yes.

24 Q. Does it say:

25 "With regards to the investment in Formula 1,

1 I specifically requested Dr. Marsoner's advice ... after  
2 JP Morgan had rejected my suggestion of jointly  
3 retaining him."

4 A. Yes, yes, yes.

5 Q. Is that an accurate statement?

6 A. Yes. I now remember the, yes, the occurrence. But  
7 this is prior to the actual closing of the CVC deal.  
8 Now I remember. There were two stages. The first, CVC  
9 took the stake and then the two banks opted out after  
10 BLB. If you remind me how the transaction went, because  
11 I can't recall it, because we were three shareholders  
12 plus Bernie Ecclestone. When CVC did the transaction  
13 who did they buy out first?

14 Q. Well, let me just ask you a question. So you  
15 referred to two banks?

16 A. JP Morgan, Lehman Brothers and BLB were the three  
17 investors in, or investors who had seized the shares  
18 from Kirch. CVC acquired control of Formula 1 and then  
19 subsequently acquired an additional stake.

20 Q. Why did you request Dr. Marsoner's advice?

21 A. At the time there was a dilemma as to what to do,  
22 whether to accept the proposal, but I can't remember if  
23 it was the first purchase or the second purchase,  
24 because the clients of Formula 1 and the teams headed  
25 by, they were using Goldman Sachs at the time, but they

1        were voicing and saying that they did not intend to  
2        continue with Formula 1 and they wanted to create  
3        a rival event which technically they could have possibly  
4        done, and obviously the value of Formula 1 would have  
5        been completely different if some or most of the teams  
6        migrated to another event.

7                So the issue was strategically was this asset going  
8        to be a difficult one or was this all posturing, and all  
9        it took was to tweak the margins and have them make  
10       a little bit more money and change the team versus  
11       Formula 1 split. And this had been going on for some  
12       time, I recall. But when CVC came in it became even  
13       more antagonistic from Mercedes, from, you know, the  
14       leading teams.

15       Q. And who were the leading teams?

16       A. The leading teams were Mercedes, McLaren, Ferrari  
17       to some extent, but at least it was the only one where  
18       I had my direct contacts. But I didn't, because the  
19       firm was not very strong in automotive, we didn't have  
20       direct links, especially with the Germans and then  
21       Goldman was trying its best to make sure we didn't have  
22       access to anybody who sang outside of the choir.  
23       I asked Thomas, and the other thing that I needed to  
24       know from, you know, to give the firm some advice, was  
25       where things stood with BLB, because, you know, it

1 became a very big issue and even at the time there were  
2 issues around it. And that is where he was kind of  
3 fished out. But now, this is 2005. I can't remember if  
4 he was still under the mandate or not, maybe it was,  
5 which of the various mandates that Thomas had, whether  
6 it was covered or not.

7 Q. Do you remember the advice that he provided?

8 A. He provided, he took some time to provide it, but  
9 he managed to speak directly with, I think McLaren was  
10 one of the ones where we didn't have an clue as to, you  
11 know, how to contact them because they were not --  
12 Mercedes, at least you do fixed income with them.

13 McLaren is not an entity that we were banking. But also  
14 through the banking circles in Germany it is hard to  
15 understand where things stood with the teams, whether  
16 they were prepared. Because the migration to a new  
17 event would have meant, for the auto manufacturers who  
18 decided to do that, probably taking three steps back in  
19 terms of visibility and so on, before it was up and  
20 running and, you know, Formula 1 had already been going  
21 for decades at the time. So he was instrumental in  
22 understanding whether it was a bluff or it was real.

23 Q. So in your view did Dr. Marsoner provided  
24 invaluable advice?

25 MS. ALVAREZ: Objection to form.

1 A. Obviously in retrospect at the time the advice was  
2 his understanding of the situation. In retrospect it  
3 was right.

4 Q. To your understanding did Lehman Brothers rely on  
5 Dr. Marsoner's advice?

6 A. I think this was debated at the investment  
7 committee and as the pros and cons, and I think it was  
8 one of the elements, certainly not the only element. If  
9 I remember correctly the way that it was presented, as  
10 I was saying before, it wasn't me presenting it, it was  
11 either Jeremy Isaacs or Meissner.

12 Q. Okay.

13 A. As it was a European issue, where it was how much  
14 money do we have this investment on the books at? How  
15 much are we getting back, if we do at all? How much are  
16 we getting, and they did the calculation how much, you  
17 know, the firm needed as a capital gain -- capital gain;  
18 writing back of an investment -- and how much we could  
19 afford to, you know, take a punt on future values.

20 Q. And in your view do you believe Dr. Marsoner should  
21 be paid for that advice?

22 MS. ALVAREZ: Objection to form.

23 A. I think, yes, he would be, he would have been paid,  
24 I would say, in retrospect. I don't know the ins and  
25 outs of what specific authorizations he, you know,

1 worked at the time but I think the firm would have taken  
2 -- you see our agreements were the senior advisers were  
3 very one sided. So I mean once there was a negotiation,  
4 we could say okay, it is between X and Y, but then it  
5 would be the sole discretion of the firm how much to  
6 pay, and if you liked it you stayed, if you didn't like  
7 it that was the way we worked. But on the other hand we  
8 never left, we never asked for any advice, work and so  
9 on to then not pay anything. It was just not done and  
10 certainly under my watch it never happened. The  
11 amounts, though, would be determined, even post facto.

12 Q. Was the type of advice he provided on F1 similar to  
13 in the BAWAG transaction?

14 MS. ALVAREZ: Objection to form.

15 A. It was similar. It was similar in terms of advice.  
16 The difference was that here it was an exit or not  
17 an exit of an existing position. BAWAG was really  
18 driven as an advisory mandate. You know, it was more of  
19 an investment bank. Here, the firm owned a position,  
20 willingly or unwillingly, and he provided advice in  
21 terms of tactics, the same as BAWAG, but for a different  
22 purpose.

23 Q. Do you know the Lehman entity used to reinvest in  
24 F1?

25 A. No. I mean do I know it, maybe I knew, because --



1 but they all sounded the same so I don't know which one  
2 finance mainly chose as, but I am sure it had something  
3 to do with where the losses were.

4 Q. Okay.

5 A. So it wouldn't have been decided on a hierarchical  
6 because it is this division that has made -- well,  
7 nobody had made the investment, it came out of fixed  
8 income, mainly, having done a collateralized loan on  
9 which there was a default and I would assume they would  
10 have reinvested. But I am out of my depth. That they  
11 would have used the same entity that suffered the loss  
12 in, you know, realizing any capital gain in the same  
13 entities to use it. But --

14 MR. JOHNSON: Do you want to take a ten minute break?

15 I want to read my notes to see if I have anything else.

16 MS. ALVAREZ: Okay, that sounds good.

17 THE VIDEOGRAPHER: We are going off the record. The time is  
18 4:29 p.m.

19 (4:29 p.m. )

20 (Break taken.)

21 (4:46 p.m. )

22 THE VIDEOGRAPHER: We are back on the record. The time is  
23 4:47 p.m.

24 BY MR. JOHNSON:

25 Q. Mr. Pignatti, I have a couple more questions for

1           you.

2           A.   Sure.

3           Q.   Could you please turn back to the October 14, 2005  
4           email.  It is from you to Jonathan Rouner.

5           A.   Yes.

6           Q.   Do you remember seeing or sending this email?

7           A.   I remember the content, yes.

8           Q.   And do you see that you are listed as the person  
9           who sent the email?

10          A.   Mm-hm.

11          Q.   Was this document sent in the scope of your  
12          business activity at Lehman Brothers?

13          A.   Absolutely.

14          Q.   Do you have any reason to dispute that this  
15          document came from Lehman Brothers' files?

16          A.   No.

17          Q.   Do you have any reason to dispute that it was part  
18          of Lehman Brothers' business activity to maintain  
19          records of emails?

20          A.   No.

21          Q.   Okay.  Now, could we please look at November 26,  
22          2005 email -- previously marked?

23   THE COURT REPORTER:  Exhibit 5.

24   MS. ALVAREZ:  Exhibit 5 of Sherratt's deposition, was it  
25          marked?

1 MR. JOHNSON: Yes.

2 MS. ALVAREZ: Okay.

3 BY MR. JOHNSON:

4 Q. This is the November 26, 2005 email from Thomas  
5 Bernard to Steve Hannan, Patrick Schmitz-Morkramer and  
6 Peter Sherratt.

7 A. Mm-hm.

8 Q. Do you see where it says:

9 "FYI, if McClaren is true, it's huge."

10 A. Which part?

11 Q. It should be the top, the top of the email.

12 A. Mm-hm.

13 Q. And do you ever remember seeing an email that said  
14 that the McLaren information wasn't huge?

15 MS. ALVAREZ: Objection to form.

16 A. No.

17 Q. Okay, thank you. That is it.

18 MS. ALVAREZ: Are you done with your questioning?

19 MR. JOHNSON: Yes.

20 MS. ALVAREZ: Okay.

21 BY MS. ALVAREZ:

22 Q. Good afternoon Mr. Pignatti. I want to thank you  
23 again for agreeing to sit with us today.

24 Before I get into our questions, I want to lay down  
25 some basic ground rules for depositions. First of all

1 have you been deposed before?

2 A. No.

3 Q. No, okay. I will do that. I am going to ask you  
4 questions. If you don't understand what I am asking or  
5 you are confused about anything I would like you to tell  
6 me what your question is, and let me know how I can  
7 clarify the question for you. If you answer a question  
8 I am going to assume that you understood it.

9 Make sure, the court reporter here is taking  
10 everything down, so just make sure that you answer  
11 verbally yes, no, or whatever explanation you need to  
12 give. Sometimes people nod or shake their heads. The  
13 court reporter can't take that down. So just make sure  
14 you use your voice.

15 You know, common sense; we are going to try not to  
16 talk over each other since the court reporter is taking  
17 it down, so I will ask the questions and you can give me  
18 your answers and we will do it that way.

19 If at any point you need to take a break, use the  
20 rest room, that is fine. Just let us know. The only  
21 time you can't take a break is when a question is  
22 pending. You will have to answer the question and then  
23 we can break.

24 Were those instructions clear?

25 A. Yes, thank you.

1 Q. Okay, great.

2 So what I would like to start off with, I would like  
3 to mark as exhibit 1 to Mr. Pignatti's declaration,  
4 Lehman's notice of deposition.

5 THE COURT REPORTER: You need to have the one I have marked.

6 (Exhibit Pignatti 1 marked for identification)

7 Q. This is a notice of deposition of Vittorio  
8 Pignatti-Morano, it is signed by Jacqueline Marcus of  
9 Weil, Gotshal & Manges. Have you seen this before,  
10 Mr. Pignatti?

11 A. Yes I believe I was sent it.

12 Q. Okay, I just wanted to make sure that you saw it.  
13 At the end it says LBHI intends to cross-examine the  
14 witness for approximately 3 hours, do you see that?

15 A. Yes.

16 Q. We are hoping to do it in less time. We will try  
17 our best.

18 You told us a little bit about your employment at  
19 Lehman Brothers earlier today. I want to clarify, did  
20 you hold a board position at Lehman Brothers?

21 A. I was on the operating committee. I was on the  
22 board of some of the companies.

23 Q. Okay. Were you on the board of Lehman Brothers  
24 Holdings Inc?

25 A. No.

1 Q. Okay. What about Lehman Commercial Paper Inc?

2 A. No.

3 Q. Okay. So I would like to talk to you a little bit  
4 about how you prepared for this deposition today. What  
5 did you do to prepare for the deposition?

6 A. I went through the two contracts that I had, just  
7 to remind myself of the time frame, and that is pretty  
8 much it.

9 Q. Okay. Did you speak with anybody about the  
10 deposition?

11 A. No. I was asked to do it.

12 Q. Okay.

13 A. Mr. Marsoner told me roughly why. He felt it was  
14 needed and I agreed, given that we worked together and  
15 I was, you know, happy to give my side of my  
16 contribution to the dispute.

17 Q. What did Mr. Marsoner say about the matter?

18 A. The matter? That it was concerning, you know, the  
19 advice given in the period when I was responsible and  
20 afterwards.

21 Q. Okay. Did he tell you anything specifically about  
22 the agreements?

23 A. The agreements he didn't need to tell me much  
24 specifically; I signed them so I can answer on those.  
25 And he gave me some background that the dispute is also

1 on Formula 1, and the advice that was given in my time  
2 and after.

3 Q. Okay. And what did he say about that advice?

4 A. Whether I remembered you know, that he had given  
5 advice at the time and I answered that I did.

6 Q. Okay. Did you talk about whether he ever requested  
7 payment for Formula 1?

8 A. No, I have not discussed that with him.

9 Q. Okay did he ask you? Do you remember whether you  
10 talked about payment terms?

11 MR. JOHNSON: Objection to form.

12 A. No.

13 Q. Okay. Did you discuss whether Lehman ever agreed  
14 to pay him for Formula 1?

15 MR. JOHNSON: Objection to form.

16 A. I discussed with him the need for me to answer  
17 about our relationship and the advice given in my  
18 capacity as the head of mergers and acquisitions and  
19 therefore the nominated person at the time.

20 Q. Okay.

21 A. And afterwards anything else I remembered.

22 Q. Okay. Did you talk about Tom Bernard's view of the  
23 matter?

24 MR. JOHNSON: Objection to form.

25 A. No, but I looked up, you know, the old sort of

1 emails, but I have not spoken with Tom Bernard in the  
2 last three, four years.

3 Q. Okay. What about, did you talk about Magnoni's  
4 email, Mr. Magnoni's view of the matter?

5 MR. JOHNSON: Objection to form.

6 Q. Ruggero Magnoni.

7 A. No, I talked to Ruggero Magnoni because he asked me  
8 whether I was under, you know, I was going to do this,  
9 some months ago.

10 Q. You spoke to Magnoni about that?

11 A. Yes.

12 Q. Okay.

13 A. He asked me whether I was doing something and  
14 whether I possessed information, or remembered. You  
15 know, we are talking about things that happened ten  
16 years ago.

17 Q. Okay. And when did you speak to Magnoni?

18 A. A few months ago. I speak with Magnoni regularly.

19 Q. Okay, but you haven't spoken to him about Formula 1  
20 for a few months?

21 A. Not recently, no.

22 Q. Okay. When you have spoken to Dr. Marsoner about  
23 Formula 1, have you spoken about the differences between  
24 the various Lehman entities?

25 MR. JOHNSON: Objection to form.



1 A. No.

2 Q. Have you spoken to Mr. Magnoni about the  
3 differences between the various Lehman entities?

4 MR. JOHNSON: Objection to form.

5 A. No.

6 Q. Okay. Did you look for any documents in your  
7 possession that could refresh your recollection?

8 A. I did and I found the two contracts that I had  
9 signed and some accompanying emails. And I bought  
10 a business from Lehman. Everything came with it so  
11 I have possession of all of my emails from the server at  
12 the time.

13 Q. Okay.

14 A. I only have mine and the received and sent, so  
15 I won't have anything else.

16 Q. Okay. I just want to make sure I understood. You  
17 do have access to emails that you received and sent?

18 A. Yes. Most of them. So I did a global search but  
19 I didn't look through the whole thing, I looked for the  
20 contracts and picked up a few other things just to  
21 recollect what we were talking about.

22 Q. Okay. Did you do this on your own or did  
23 Dr. Marsoner ask you to look for documents?

24 A. No, I did it on my own.

25 MR. JOHNSON: Objection to form.

1 Q. Okay. Is there anything else about Formula 1 or  
2 this matter that you had discussed with Dr. Marsoner  
3 that we haven't covered?

4 A. No.

5 Q. No. Okay. Was there anything else regarding  
6 Formula 1 or this matter that you discussed with  
7 Mr. Magnoni that we haven't covered?

8 A. Not that I can remember.

9 Q. Okay. You said the last time you spoke to Magnoni  
10 was a few months ago?

11 A. On this, it was a few months ago. I think probably  
12 at the time of this --

13 THE COURT REPORTER: Sorry, could you keep your voice up  
14 a little bit.

15 A. Yes, sure.

16 No, this is more recent. It must have been before  
17 the summer.

18 Q. Okay. What did Mr. Magnoni say about this matter?

19 A. He was trying to recollect the sort of years when  
20 it happened, and what his role was at the time.

21 Q. And what was his recollection?

22 A. Well, his recollection was really based on  
23 remembering what it was, because he just remembered that  
24 I was the head of M&A in those years.

25 Q. Mm-hm.

1           A. And he had a big involvement in Formula 1 in the  
2           very beginning, because he at the time was responsible  
3           for principal investing and he had unfortunately made  
4           the investment in Kirch so he, after a period of time,  
5           when it stopped breathing, the investment did, as it  
6           typically was with the firm, the responsibility was  
7           moved to M&A advisory rather than having the person who  
8           made the "bad investment" also deal with it. So when it  
9           went into administration, it became evident that it  
10          wasn't going to be a matter of weeks or months. So it  
11          was moved on. And his involvement remained that of  
12          a senior person at Lehman, but no longer on a day by day  
13          basis.

14          Q. Okay. You said a lot there, so I want to make sure  
15          I got it. You said that Mr. Magnoni was involved in the  
16          deal with Kirch from early in the beginning?

17          A. Yes, all of the way.

18          Q. All of the way.

19          A. To the bankruptcy of Kirch.

20          Q. Okay.

21          A. And then he remained, one of the most senior people  
22          at Lehman.

23          Q. Mm-hm.

24          A. With, you know, various responsibilities within the  
25          group.

1 Q. Mm-hm.

2 A. So he was obviously informed throughout but he was  
3 not responsible as to how, it was always separate. So  
4 he was not indifferent to the outcome of, having clearly  
5 been associated with the original investment, which was  
6 not the entire thing. In fact the Formula 1 came from  
7 a loan that was given by JP Morgan, BLB and Lehman.

8 Q. Mm-hm.

9 A. The fixed income department; a large loan. And  
10 then there was an additional amount to be  
11 "recovered" which unfortunately was an equity investment  
12 in the Kirch holding company, where the amount recovered  
13 in the end was negligible.

14 Q. Okay.

15 A. So overall when you look at the firm's point of  
16 view on the whole Formula 1 saga, it wasn't just a gain  
17 on having recovered the collectively 1 billion-dollar  
18 loan, where Lehman must have been maybe 300.

19 Q. Okay.

20 A. I think those are the -- 300, JP 300, balance BLB.

21 THE COURT REPORTER: I am really struggling to hear you,  
22 Mr. Pignatti, could you keep your voice up.

23 A. Okay, I will look your way.

24 THE COURT REPORTER: If you look at the camera, that's fine.

25 A. So we kind of recollected the events. Clearly he

1 knew his part; a large organization, he knew the equity  
2 investment, which was hundreds of millions of Euros, had  
3 gone really badly and there was a positive recovery on  
4 the loan.

5 Q. Okay. And when you were looking for documents to  
6 prepare this deposition, did you look for any documents  
7 showing that Lehman would pay Dr. Marsoner for  
8 Formula 1?

9 A. No. I actually was looking at -- the documents  
10 that I have were all of the ones under my watch. So  
11 I would have known what Lehman, I represented Lehman.

12 Q. Mm-hm.

13 A. To a large extent. So I was looking to see what  
14 exactly were -- sort of brushing up on the course of  
15 events and in which years was I working on --

16 Q. Okay. Did you look for any agreements that covered  
17 Formula 1 with Dr. Marsoner?

18 A. Yes.

19 Q. And did you find any?

20 A. No, not under my watch. It was not specifically  
21 mentioned. I found some emails on sort of advice  
22 provided. Prior to the sale to CVC there was the dates  
23 confusion.

24 Q. Okay.

25 A. And the events with CVC was done in 2006. That was

1 the time when I changed jobs within Lehman, so this was  
2 across, the discussion was prior, and it took, I think,  
3 a long time between handshake and actually doing the  
4 agreement with CVC.

5 Q. Okay. And we are going to go through some  
6 documents which will hopefully help you with the  
7 timeframe as well.

8 A. Sure.

9 Q. I would like to take a look at the letter you had  
10 submitted to the bankruptcy court, which was marked  
11 exhibit 6 to Peter Sherratt's deposition that we looked  
12 at earlier.

13 A. January 7?

14 Q. Yes, January 7. Let us mark this as exhibit 1 to  
15 your deposition, just so that we have a uniform set.

16 THE COURT REPORTER: 2.

17 MS. ALVAREZ: Oh, the notice was 1. Okay, we will mark this  
18 as exhibit 2.

19 A. Want to put the label? I am getting the gist of  
20 it. It is already labeled as 6. Do you want to remove  
21 it?

22 THE COURT REPORTER: No. It is already labeled from the  
23 previous deposition. Do you want another label on it?

24 MR. VAN TOL: This is Pieter. I don't understand why you  
25 are remarking the exhibits have already been marked,

1           that doesn't make any sense and will lead to some  
2           confusion.

3   MS. ALVAREZ:   Was it just the letter that was marked as  
4           exhibit 6 or was it a compilation of the letters?

5   MR. JOHNSON:   It was the entire declaration.

6   MS. ALVAREZ:   I just wanted to mark Mr. Pignatti's letter as  
7           exhibit 2, not the entire compilation.

8   MR. VAN TOL:   I understand.

9           (Exhibit Pignatti 2 marked for identification)

10   BY MS. ALVAREZ:

11           Q.   Mr. Pignatti, are you ready?

12           A.   Okay.

13           Q.   Mr. Pignatti, did you draft this letter?

14           A.   Yes.

15           Q.   Okay.   Dr. Marsoner sent you this letter to sign,  
16           correct?   Did you draft it, did you type it up yourself?

17           A.   I actually, you know, received some indications of  
18           what the theme was and so on, and then I edited this  
19           version and did it myself, yes.

20           Q.   So you edited a version that Dr. Marsoner had sent  
21           you?

22           A.   It was, I think, there were some suggestions on the  
23           things, the events that had to be described, and then  
24           I wrote it.

25           Q.   Okay.   Do you -- and he sent it to you via email?

1 How did he send you the ideas that he wanted you to  
2 include in the letter?

3 A. Maybe by email, I can't remember.

4 Q. Okay. I don't think we have a copy of that. So we  
5 will actually request a copy of that email from  
6 Dr. Marsoner, sending you information that he wanted in  
7 the letter. And I just want to confirm, this is your  
8 signature on this letter, correct?

9 A. Yes.

10 Q. Okay. What edits did you make, what information  
11 did he give you, let us try --

12 MR. JOHNSON: Objection to form.

13 Q. -- to think a little here. Okay, I will clarify.  
14 When Dr. Marsoner sent you the information that he  
15 suggested would be included in this letter what was  
16 there, what information was there?

17 MR. JOHNSON: Objection to form.

18 Q. Do you understand the question?

19 A. Yes, yes, I am trying to remember. Frankly,  
20 I think there was some things that were not really  
21 concerning me or at the time at which I was responsible  
22 for this so that I limited the letter to the things that  
23 I knew.

24 Q. Okay. Do you recall what was in there that you  
25 didn't know, that you didn't include in this letter?



1 A. I think the thing that I didn't know was whether  
2 the amount had already been decided in case of success,  
3 or, you know, anything, because it was done subsequently  
4 to my new role.

5 Q. Was there anything else that you didn't know about  
6 that you didn't include in this letter?

7 A. I think it was also on the exclusivity of Lehman,  
8 whether the information that he had provided and so on  
9 was the exclusive reason and I said that I remember it  
10 was an important theme, but it is very difficult to say  
11 whether a decision is made exclusively in the end. The  
12 people who made decisions, they were very senior people  
13 in the firm who do not necessarily share the bases.  
14 They don't need, like judges, to come out and explain  
15 their resolution.

16 Q. Okay. When you say exclusive reason, you are  
17 referring to whether Dr. Marsoner's advice was the  
18 exclusive reason for Lehman retaining its shares in  
19 Formula 1?

20 A. Absolutely.

21 MR. JOHNSON: Objection to form.

22 A. Absolutely.

23 Q. Okay. And what you are trying to say is that while  
24 Dr. Marsoner's advised was a factor, it was not the  
25 exclusive reason for Lehman's decision?

1 MR. JOHNSON: Objection to form.

2 A. As I say, we did not issue, it was difficult enough  
3 to decide, we did not need two and certainly they were  
4 senior people, the whole firm was involved in making the  
5 decisions, because as I said before, there was lots of  
6 egg on our face and a huge amount for Europe especially.  
7 It was one of the few big losses in Europe and therefore  
8 there was a lot of attention and decisions were taken in  
9 a collegiate way but without needing an explanation.

10 Q. Okay. And after Lehman had acquired these shares  
11 as a result of Kirch's default, a team, a work out team,  
12 was put together to handle this investment, correct?

13 A. Yes.

14 Q. And --

15 A. For many years, because it must have been 2002/3  
16 that we exercised the pledge, jointly with JP, BLB.

17 Q. Okay.

18 A. And then for a number of years we discovered that  
19 the governance was very opaque. But the key people, you  
20 saw them listed before were people working in my  
21 department called Patrick Schmitz-Morkramer and Patrick  
22 Bierbaum and on the legal side Peter Sherratt.

23 Q. Okay. And I would like to mark this next document  
24 as Pignatti 3, the Bates range on the document is Lehman  
25 222 through Lehman 224.

1 (Exhibit Pignatti 3 marked for identification)

2 Q. And just take a look at it, Mr. Pignatti. This is  
3 an email from Patrick Bierbaum to Peter Sherratt,  
4 yourself, Stephen Sleigh and copied as CCs are Tom  
5 Bernard, Steve Hannan, Patrick Schmitz-Morkramer and the  
6 subject line is "scope of responsibility description for  
7 Thomas Marsoner", do you see that?

8 A. Yes.

9 Q. Okay. Now, I am just going to read the text of the  
10 email. It says:

11 "Please find attached the scope of responsibility  
12 description for Thomas Marsoner for your comments. We  
13 are intending to use it to convince JPM that Klaus  
14 Diederichs will not be able to fulfill all duties  
15 an operating director of Formula One due to his fulltime  
16 position at JPM."

17 A. Mm-hm.

18 Q. Okay. Before we get into the detail of the  
19 substance, you probably told me already, but I am going  
20 to ask you, who is Patrick Bierbaum?

21 A. Patrick Bierbaum was at the time an associate,  
22 maybe. So intermediate level, the youngest in the team,  
23 who was doing the day by day. If I remember correctly  
24 I think Sleigh was the originator in fixed income of the  
25 loan.

1 Q. Okay.

2 A. So he was kept informed. But just like Magnoni had  
3 been taken out of the day by day decision making, so the  
4 fixed income for the originated loan likewise.

5 Q. Okay.

6 A. Steve Hannan, I don't remember what his role was.  
7 Patrick Schmitz-Morkramer was the boss of Bierbaum. He  
8 reported to me. To, he had a dual task, to ideally help  
9 the firm recover both on the equity investment, so this  
10 was not the only assignment they had, but at least on  
11 the equity investment we were on our own, we didn't have  
12 a JP Morgan and BLB. Instead on this one we had Klaus  
13 Diederichs of JP Morgan and, even worse, the BLB  
14 executives, who did not necessarily see eye to eye with  
15 us. So every decision had to reach first the quorum  
16 among the banks and then be discussed. So that is what  
17 took up most of Patrick Bierbaum's time.

18 Q. Okay, and Peter Sherratt is identified here as  
19 well. He was legal counsel?

20 A. Absolutely.

21 MR. JOHNSON: Objection. Leading.

22 A. Hmm?

23 MR. JOHNSON: I just made an objection.

24 Q. You can answer the question. Peter Sherratt was  
25 legal counsel, correct?

1 MR. JOHNSON: Objection. Leading.

2 A. Correct, to the firm in Europe and particularly to  
3 the thorny transactions like this one that involved  
4 everything, including reputation. As I said, this was  
5 not an investment, this was a work out.

6 Q. Okay. And Tom Bernard was the lead of the work out  
7 team?

8 MR. JOHNSON: Objection. Leading.

9 A. Tom Bernard was one of the most senior people on  
10 the principal investment in New York, and sort of  
11 trusted by the top of the firm to supervise any  
12 complicated recovery. He was also supervising the Prop  
13 Principal Investments. So actually, functionally, his  
14 interests should have been more on the equity investment  
15 that had turned sour than the fixed income, but given  
16 that in the end they resulted in one big mess, we kind  
17 of pooled the working team.

18 Q. Okay.

19 A. But he was instrumental in getting sort of New  
20 York's buy in into any decision that Europe made.

21 Q. Okay, at the time this email was  
22 prepared, October 22, 2002, around that time, Lehman and  
23 JP Morgan were considering jointly retaining  
24 Dr. Marsoner?

25 MR. JOHNSON: Objection. Leading.

1           A. I think so, but if you ask me do I remember ten  
2 years ago the step by steps, I would be lying. But  
3 I think, you know, the evidence by this email must have  
4 been the first time when we suggested that, you know,  
5 the work out team, especially the two big American  
6 banks, who I must say, saw eye to eye, so we tended,  
7 although we were junior to BLB, together we had  
8 a quorum. So I remember suggesting that because both  
9 Klaus and I had a lot of other things to do in life, it  
10 was good to have -- and the Patricks were relatively  
11 young. Technically they were fantastic and so on, but  
12 they could not go and meet Bernie Ecclestone and tell  
13 him what to do. So we thought that it would have been  
14 okay if neither firm had a very senior, dedicated  
15 German, and especially one who maybe knew well the  
16 German bank, with whom neither I nor my counterpart,  
17 Klaus, had a honeymoon from the start. So first the  
18 language. Well, in the case of Klaus not, but in my  
19 case, the language, we didn't build a relationship and  
20 became relatively acrimonious in terms of who, we had  
21 one seat, so who got the seat? BLB. Who did they send?  
22 Someone both Klaus and I thought was not equipped. So  
23 I think I proposed, I said do we have a senior German?  
24 Yes.

25           Q. Okay, and --

1 A. But I can't remember if it was my idea or the  
2 Patricks, or --

3 Q. Okay. So the idea was, what you were considering  
4 was retaining Dr. Marsoner to represent the interests of  
5 the banks in Formula 1.

6 A. Yes, to follow it.

7 MR. JOHNSON: Objection. Leading.

8 A. We did not delegate any decision making and so on,  
9 but to be there at every meeting, to go and spend  
10 afternoons in Berlin and talk to them and explain to  
11 them how things work. That was, all of the agreements  
12 that we found in case of repossession of the stake of  
13 Formula 1, which was the most convoluted Jersey or  
14 Guernsey holding company with trusts and everything  
15 else, and we were represented in that by a German bank  
16 that didn't have very deep knowledge of these matters.  
17 Obviously Peter Sherratt was providing that. But they  
18 were not necessarily volunteering to listen.

19 Q. Okay. So --

20 MR. VAN TOL: Mr. Pignatti, this is Pieter Van Tol again.  
21 Could you make sure that you pause between the question  
22 and the answer, in case Mr. Johnson needs to interpose  
23 an objection?

24 A. Yes, sure.

25 MR. VAN TOL: Thank you very much.

1 BY MS. ALVAREZ:

2 Q. So at this point in time Lehman was not planning on  
3 selling its stake in Formula 1.

4 MR. JOHNSON: Objection. Leading.

5 A. That is correct. We had just got it and in fact we  
6 were trying to secure that the stake would have  
7 a meaning, you know, in terms of control. Because when  
8 the firm inherited this stake by executing a pledge --

9 Q. Mm-hm.

10 A. -- the governance had not been negotiated with the  
11 other shareholder.

12 Q. Okay.

13 A. And the other shareholder, the trust, apparently  
14 controlled by Mr. Ecclestone --

15 Q. Mm-hm.

16 A. -- did not say okay, welcome, you know, to the new  
17 shareholder and so on. This is our business, if you  
18 want to come, you know, to board meetings every once in  
19 a while, you know, be my guest. It was not a smooth  
20 relationship because it was not negotiated in advance.  
21 We had not paid a price to Mr. Ecclestone, or anything  
22 you know, so frankly he did not owe us anything to  
23 change the way in which things were run.

24 Q. Okay. At this point you weren't advising Lehman to  
25 sell its stake either?



1 MR. JOHNSON: Objection. Leading.

2 A. My task was a different task. Okay, at that time  
3 the stake was unsaleable.

4 Q. Okay. Thank you.

5 A. We owned 75 percent interest in a holding company  
6 that an agreement with another holding company in  
7 Guernsey and so on, and Peter Sherratt, give him credit,  
8 and us, the banking team in three years would change  
9 that situation. Not smoothly, you know, through even  
10 court cases and so on. We at one point to eliminate the  
11 BLB representative, who in theory was working on our  
12 behalf, and finally some changes took place.

13 Q. Okay.

14 A. Which then led Bernie Ecclestone to become much  
15 more amenable to a sale. Rather than having three banks  
16 being difficult and so on, they saw that we were quite  
17 effective in making his life not so easy.

18 Q. Okay.

19 A. Had it been only BLB, I think he would still now  
20 age 84 control the company with 25 percent and make all  
21 of the decisions single-handedly.

22 Q. Okay. So at this point you considered retaining  
23 Dr. Marsoner. The decision was made not to retain him  
24 in 2002, correct?

25 MR. JOHNSON: Objection. Leading.

1 A. That is correct. I think JP came back saying,  
2 well, you know, for us, you know, JP, Lehman and we take  
3 a Lehman guy, you know, it sounds like we are giving you  
4 the keys and so on. You know, if you want to, we would  
5 be delighted if you add him to the team at your expense.

6 Q. Okay.

7 MR. JOHNSON: Just to point out the objection to leading is  
8 based on the fact that he is not a hostile witness, he  
9 is an ex employee of Lehman Brothers.

10 MS. ALVAREZ: You can take that position. We are taking the  
11 position that he is a friendly witness to Dr. Marsoner  
12 so he would be a hostile witness to Lehman Brothers. He  
13 is no longer employed with Lehman Brothers.

14 MR. JOHNSON: He is an ex employee, though.

15 MS. ALVAREZ: That is fine.

16 MR. VAN TOL: This is Pieter. And unless you establish  
17 a foundation, none of your questions are admissible.

18 MS. ALVAREZ: Well, that is really for the court to decide.  
19 So we will move on.

20 BY MS. ALVAREZ:

21 Q. I want to jump head, that is 2002. I want to jump  
22 ahead three years, let us jump ahead to 2005. In 2005  
23 you learned that CVC Capital was considering making  
24 an offer to Lehman to purchase the Formula 1 shares,  
25 correct?

1 MR. JOHNSON: Objection. Leading.

2 A. Yes, I don't remember the months, when it happened,  
3 when it closed. So it was between 5 and 6.

4 Q. Okay. And --

5 A. For sure.

6 Q. And you, as an investment banker, you were  
7 providing advice to Lehman at this time on the Formula 1  
8 shares?

9 MR. JOHNSON: Objection. Leading.

10 A. Yes. I was still involved in the transaction, but  
11 less so because it had now reached the stage where we  
12 had sufficient governance and there was maybe  
13 a possibility to sell.

14 Q. Okay. And by sufficient governance, you meant CVC  
15 was going to come in as a controlling shareholder?

16 A. I mean before that.

17 Q. Objection. Leading.

18 A. The three banks had reached an understanding so  
19 that their influence on the company was something that  
20 CVC would have been interested in. CVC was not  
21 interested in a passive minority governance, owning 75  
22 percent of the company.

23 Q. So CVC was interested in having an active role in  
24 ensuring the profitability of Formula 1?

25 MR. JOHNSON: Objection. Leading.

1 A. Profitability or not, having on paper the ability  
2 to change things if they were not happy to act as owners  
3 of the business, which is not the way in which we  
4 entered.

5 Q. Okay. So CVC coming in, establishing this, more of  
6 a corporate structure, made the investment, the  
7 Formula 1 investment, more valuable for Lehman, correct?

8 MR. JOHNSON: Objection. Leading.

9 A. The course of events when we were talking was prior  
10 to the CVC investment. I can't remember when in 2006  
11 they actually step in.

12 Q. Okay.

13 A. Okay.

14 Q. So once they did, so let us say it's 2005/2006?

15 A. Okay.

16 Q. Once CVC stepped in, the investment became even  
17 more valuable for Lehman, correct?

18 MR. JOHNSON: Objection. Leading.

19 A. The investment became more valuable, or the  
20 company, Lehman, when CVC came in, sold part of its  
21 stake.

22 Q. Okay.

23 A. Okay. But CVC was able to acquire, operate and  
24 control the group. That in itself gave it a value that  
25 prior to that was really encumbered by a minority

1 discount.

2 Q. Okay. So now that this value was no longer  
3 encumbered by the minority discount, you weren't  
4 advising Lehman to sell its stake, were you?

5 MR. JOHNSON: Objection. Leading.

6 A. I was not advising Lehman to sell its stake. It  
7 depends when. I mean the last opinion that I gave was  
8 when the transaction was closed and Lehman sold part of  
9 its stake and retained -- technically that was done as  
10 a new investment for tax purposes, in fact instead of  
11 selling it is entire stake, as JP Morgan elected to,  
12 Lehman decided in the end to keep. Obviously if it had  
13 kept its entire stake it would have been better. So in  
14 terms of value creation for Lehman, I mean in retrospect  
15 easier to say it would have been not to have sold the  
16 stake altogether.

17 Q. So that's --

18 A. Which was technically not possible, because Lehman  
19 needed to show some recovery of its money on, you know,  
20 at the time of closing with CVC. And it was able to  
21 retain a stake and, you know, it turned out to be  
22 a positive decision rather than the JP Morgan one, who  
23 just didn't want to hear about it.

24 Q. Okay.

25 A. They had a different balance sheet to Lehman.

1 Q. Okay. At the time Lehman retained that stake that  
2 JP Morgan didn't want anything to do with you weren't  
3 advising Lehman to let go of it, were you?

4 MR. JOHNSON: Objection. Leading.

5 A. That was no longer my task at that point. But if  
6 not, tangentially as a member of the investment  
7 committee and a senior executive of the firm.

8 Q. Okay. And whose task was it?

9 A. Jeremy Isaacs first, as head of Europe, and  
10 therefore probably the largest exposure that they had.  
11 In Europe we didn't have a huge balance sheet like the  
12 US. This was a very meaningful decision that was not  
13 pure asset management. Either we had the capital to  
14 keep it or we didn't have the capital to keep it, and it  
15 was his call.

16 Q. Okay. And were you advising Jeremy Isaacs?

17 MR. JOHNSON: Objection to form.

18 A. I was, I was giving him suggestions. We used to  
19 meet every Monday and discuss the most topical things.

20 Q. Okay.

21 A. And Christian Meissner, as the person who took over  
22 the responsibility, who on top was also German. And  
23 therefore certainly more, closer to the situation, post  
24 I moved to the asset management division.

25 Q. Okay.

1 Now, I want to look at what has been marked as  
2 Pignatti exhibit 2, which is the letter you submitted to  
3 the court, Mr. Pignatti, could we look at it again. And  
4 on the second page, the very last paragraph, you state:

5 "It was my understanding that Dr. Marsoner would  
6 have been paid by Lehman Brothers for his services  
7 concerning the F1 investment or I would not have asked  
8 him to help."

9 What was the basis for your understanding?

10 A. My understanding is that, as I think I mentioned  
11 before, we had a long consolidated relationship with our  
12 senior advisers which was regulated by contracts but  
13 they were completely one sided. You might have read  
14 them.

15 Q. Mm-hm.

16 A. It says if the firm decides that you had a major  
17 involvement in a transaction. So completely left to our  
18 discretion, the firm's discretion. And therefore we  
19 were instructed to use this power, not  
20 opportunistically, but bearing in mind that we had  
21 a name, a future and we had to keep our senior advisers,  
22 you know, happy.

23 Q. Mm-hm.

24 A. But within, you know, the boundaries of the  
25 economic interests of Lehman. And therefore, as you can

1 see from previous emails and so on, any time we utilized  
2 the senior adviser, not just myself, but also other  
3 people on the team, and it was a large organization,  
4 I wanted it to be flagged, because if we agreed to use  
5 we would then remunerate. I cannot tell you how much,  
6 it depended on our good will, on a discussion with  
7 a person and so on, but we wouldn't utilize someone  
8 outside of the contract to tell them thank you very  
9 much, it was free help, and so on. Otherwise we would  
10 not have been as successful as we were in retaining very  
11 high caliber people for relatively low fixed amounts of  
12 money.

13 Q. Okay. So when you got to that point, you realized  
14 that someone needed to be remunerated, you would have  
15 a conversation with that person about how much?

16 MR. JOHNSON: Objection. Leading.

17 A. Absolutely. I would have discussed the specifics  
18 of something that was not in the contract and would have  
19 had an internal discussion and then I would have gone  
20 back with a response. It was a negotiation to a certain  
21 point.

22 Q. Okay. And then ultimately you would need to get  
23 approval from someone more senior?

24 MR. JOHNSON: Objection. Leading.

25 A. Depending on if it was the acquisition of a M&A



1 advisory and so on. I had my guidelines and I could  
2 move on. I would specify, because in an advisory  
3 mandate you are getting a success fee and a retainer  
4 fee. So it is all, you are sharing profits with a third  
5 party and I would have documented that and the contract  
6 would have been seen and approved by Peter Sherratt and  
7 others, and we actually had a person under Peter in our  
8 division, in legal. So everything would be documented.  
9 But it wasn't a payment that came from the balance sheet  
10 of the firm, it was a forgone revenue, because they were  
11 all success based. And the fixed amount would be  
12 budgeted in my division, so at the beginning of the year  
13 I get so many millions in external expenditures; so much  
14 for travel, so much for advisers and so on. The  
15 variable part would be a deduction of revenues, so quote  
16 unquote, since my guys were all on a percentage bonus  
17 pool calculated, so obviously it was an investment made  
18 by my division and I had the authority within those  
19 boundaries to use my best judgment.

20 Q. Okay.

21 A. Okay. If, on the other hand, it was the sale of  
22 an asset owned by the firm -- there weren't that many --  
23 and that would have been always remunerated but dealt  
24 with in a different conceal.

25 Q. Okay.

1 A. So someone who brought an advisory mandate, you  
2 know, we would pay 10 to 20 percent. There were no  
3 specific incremental costs associated to it and we would  
4 consider the standard or 10 percent range. If it was  
5 a percentage of a gain, then you would be talk about 1  
6 or 2 percent, so it was a completely different scale.

7 Q. Okay.

8 A. Because there was a risk associated if it was a new  
9 principal investment or in the case of something on  
10 balance sheet it normally came from a loss, so imagine  
11 it was an additional investment in. So that would have  
12 been approved ad hoc.

13 Q. Okay. I want to make sure I understand the  
14 difference. So where there is an advisory mandate,  
15 an example of that would be the BAWAG transaction in  
16 2006?

17 A. BAWAG.

18 MR. JOHNSON: Objection. Leading.

19 A. BAWAG had, a dual, I think, we can look it through,  
20 had two components, because in BAWAG it was a major  
21 advisory mandate that we would not have gotten unless we  
22 had, for example, Thomas Marsoner in, a person on site  
23 in Vienna dealing with the politics, the bankruptcy and  
24 so, so it was better to pay him 10 percent of the  
25 revenues than not to get the mandate.

1 Q. Okay.

2 A. The second component of BAWAG was that the  
3 mezzanine fund of the firm intended to invest, and if  
4 they invested they were willing to pay a fee, sort of  
5 a finders fee, for having been brought into this  
6 investment opportunity, but that would have been 1  
7 percent, or -- I can't remember what the amount was. So  
8 those were the orders of magnitude.

9 Q. Okay. So it sounds like Dr. Marsoner was  
10 instrumental in that BAWAG transaction?

11 A. He was. First, in securing a mandate for which we  
12 were probably not the best qualified without him. And  
13 then the mandate lasted for a long time. He managed to  
14 bring to the Lehman mezzanine fund a position in the  
15 financing. That was a typical thing that happened with  
16 advisory mandates, many times, led to additional firm  
17 revenues which were not in advisory.

18 Q. Okay.

19 A. Okay. Those were remunerated because the egg came  
20 before the chicken and therefore, you know, the same  
21 scale did not apply. So that would have been outside of  
22 my powers, to add a fee for another division, risking  
23 capital, because it was really up to them to say whether  
24 they could afford, and how much. But I certainly made  
25 sure that if they utilized the referral from an adviser

1 at the investment bank they would have to pay. I would  
2 participate in the negotiation but I couldn't force them  
3 to pay out of their budget more or less.

4 Q. Okay. So when the BAWAG transaction was completed,  
5 Lehman and Dr. Marsoner came to an agreement regarding  
6 how much he would be paid for his help?

7 MR. JOHNSON: Objection. Leading.

8 A. Yes.

9 Q. Now, you mentioned when you were explaining the  
10 differences to me --

11 A. Mm-hm.

12 Q. -- that the sale of an asset situation is  
13 different?

14 A. Yes.

15 Q. Formula 1, would that fall into that category of  
16 transaction, sale of an asset?

17 MR. JOHNSON: Objection. Leading.

18 A. It was the sale of an asset and therefore there  
19 wasn't a mandate originating fees for -- you know, we  
20 were not getting paid, you know, inside of the  
21 investment banking division there wasn't an advisory fee  
22 of 3 million that Formula 1 was paying to Lehman.  
23 Because we owned the company, or co-owned, we couldn't  
24 charge any fees, so it would have come out of pocket  
25 from the firm. Therefore it happened, you know, several

1 times.

2 Q. Mm-hm.

3 A. So it would have been calculated and it wouldn't  
4 have been zero, you know, otherwise the firm would never  
5 -- if I had received an email from a discontinued  
6 adviser telling me "I want to do this", you know, "let  
7 me give you advice", I would stop him straight away and  
8 say I am sorry, but we spoke three weeks ago. I have  
9 now socialized with the operating committee, I think we  
10 have moved on. So I wouldn't use people for free,  
11 especially if they had been with the firm for 10,  
12 15 years --

13 Q. Mm-hm.

14 A. -- to lead them on. I would be quite firm and say  
15 thank you very much, you know, bring it to Goldman  
16 Sachs, these are great ideas, thanks. We wouldn't use  
17 free help --

18 Q. Right.

19 A. -- from people with whom we had a relationship that  
20 we still treasured in any shape or form. On the  
21 advisory side we wanted to be promoted as the right bank  
22 in an area or geography where we were not strong, we  
23 wouldn't short change them or use them on something we  
24 had no intention to use them, and that is my statement.

25 Q. Right, I understand that. So with Formula 1, who

1 would decide whether Dr. Marsoner would get paid for  
2 Formula 1?

3 A. Specifically on Formula 1, it would have been  
4 Bernard, Isaacs, Meissner.

5 Q. What about Peter Sherratt?

6 A. Peter Sherratt on the legal side, obviously he  
7 would have been one of the most listened to people in  
8 Europe and so on, but he didn't -- of course, being  
9 a member of the operating committee, the one who oversaw  
10 anything signed by a Lehman executive, you know, myself,  
11 copy would go to, you will find it in the internal memos  
12 of Lehman where everything went and to which companies,  
13 to who and everything else. If something jumped to the  
14 eye, Peter would call the person saying, you know, what  
15 is going on here. Normally we pay 10 percent but here  
16 you have paid 35 percent, you know, let us get to the  
17 root of that. He wouldn't be leading, you know, he  
18 would be objecting that something was either unethical,  
19 or, you know, he would check whether anybody we paid as  
20 a senior adviser was in conflict of interest because  
21 maybe he was working for the company that was being  
22 advised, or things like that.

23 Q. Okay. Thank you, that is very helpful.

24 I want to look at another document that I believe  
25 has been marked. Lehman 204. I am just trying to get

1 a record of the exhibit number. I believe it was marked  
2 during Peter Sherratt's deposition and you used it  
3 earlier. You don't need to mark it, he has one copied.  
4 Exhibit 5 should be in front of you somewhere. Okay.  
5 This is an email string. We have three emails there.  
6 The top email is dated November 26, 2005 from Tom  
7 Bernard. I would like to focus on the email at the  
8 bottom of the string which would have been the first  
9 email that we sent. It is from Thomas Marsoner  
10 dated November 25, 2005. It is to you, Mr. Pignatti --

11 A. 26th?

12 Q. Oh, the 25th, the email on the bottom of the page.

13 A. Okay, sorry.

14 Q. Do you see it is from Marsoner to you?

15 A. Mm-hm.

16 Q. Okay. The very first line says:

17 "If this is the deal I suspect it is, my senior  
18 advice is (strongly) against selling out now."

19 Do you see that?

20 A. Mm-hm, yes.

21 Q. And then Dr. Marsoner identifies the reasons why he  
22 would not sell out?

23 A. Mm-hm.

24 Q. Okay. And then at the very second to last  
25 paragraph, the paragraph that begins "needless to

1 say" it says:

2 "Needless to say, if a "fresh face" were helpful to  
3 facilitate things here, mine continues to be available  
4 for a very modest percentage participation in LB's gain  
5 upon eventual sale."

6 Do you see that?

7 A. Yes.

8 Q. Okay, I want to make sure I understand.

9 A. Yes.

10 Q. Dr. Marsoner here was offering to be what he called  
11 a fresh face in coordinating a response --

12 MR. JOHNSON: Objection. Form.

13 Q. -- for all of the banks?

14 MR. JOHNSON: Objection. Form.

15 A. He was offering to say if -- I see, 25 November,  
16 yes. What he is saying is if you have reached the stage  
17 where you want to do a sale, then do a total sale and if  
18 you agree I will be more than happy and, because he was  
19 not covered by advisory, specifies that it would be  
20 a small percentage and so on, because even if we had,  
21 you know, at the time, I can't remember if it was still  
22 the old agreement or whatever, it wasn't going to fall  
23 into an investment banking advisory agreement. That  
24 much he knew.

25 MR. JOHNSON: Just for the record, Pieter has left the video



1 conference. He is going to be dialing in soon.

2 MS. ALVAREZ: Okay.

3 BY MS. ALVAREZ:

4 Q. So Dr. Marsoner was offering to coordinate  
5 a response to CVC?

6 MR. JOHNSON: Objection. Leading.

7 A. I think it was more offered internally to see  
8 whether the deal could be, you know, improved, limiting  
9 the size of the stake that was being sold.

10 Q. Okay. And he was suggesting that he would do this  
11 for what he called a modest fee?

12 MR. JOHNSON: Objection. Leading.

13 A. Yes.

14 Q. So he is offering to facilitate things in exchange  
15 for a percentage upon LB's eventual sale?

16 MR. JOHNSON: Objection. Form.

17 Q. You never took him up on this offer, correct?

18 MR. JOHNSON: Objection. Leading.

19 A. I never took him up. I think I passed on the  
20 information to the people --

21 Q. To whom?

22 A. To Bernard, and, you know, and the others. Maybe  
23 verbally on a call, and I said guys, this is a view.  
24 And that was a time when this was, you know, a debated  
25 issue at Lehman as to what to do.

1 Q. And to your knowledge, Tom Bernard never took him  
2 up on the offer, correct?

3 MR. JOHNSON: Objection. Leading.

4 A. I don't know. There certainly was an exchange of  
5 emails with Tom Bernard.

6 Q. Do you know if Tom Bernard retained Dr. Marsoner to  
7 coordinate a response to CVC?

8 A. I don't know.

9 MR. JOHNSON: Objection. Form.

10 Q. Peter Sherratt didn't take him up on the offer,  
11 correct?

12 MR. JOHNSON: Objection. Leading.

13 A. I don't think it would have been Peter Sherratt's  
14 task to sign up a non-legal adviser.

15 Q. Well Jeremy Isaacs didn't take him up on the offer?

16 MR. JOHNSON: Objection. Leading.

17 A. Okay, that would have been the sort of person.  
18 I don't see Christian Meissner. Maybe it was before he  
19 stepped in.

20 Q. Did Jeremy Isaacs take him up on the offer?

21 A. Not that I know.

22 MR. JOHNSON: Objection.

23 A. He is the only one who could have retained  
24 an adviser for corporate Europe, for example. That  
25 would be him.

1 Q. Okay. Thank you.

2 In exhibit 2, which is your letter to the court  
3 again, and we are going to be referring to it a few  
4 times during this deposition.

5 A. Mm-hm.

6 Q. In the very last line on the first page, you say:  
7 "Lehman may well not have reinvested."

8 You know what, I think we have covered that. Let's  
9 cover -- it is actually, okay, it is the fifth  
10 paragraph, the last line:

11 "Lehman still intended to pay Dr. Marsoner a success  
12 fee for his F1 advice."

13 Do you see that?

14 A. Yes.

15 Q. Okay. You never discussed paying Dr. Marsoner  
16 a success fee with anyone at Lehman Commercial Paper  
17 Inc., correct?

18 MR. JOHNSON: Objection. Leading.

19 A. Just a caveat. Internal companies and so on at  
20 Lehman were not part of the information flow. So I was  
21 not speaking with Tom Bernard because he was such and  
22 such company of Lehman and so on. Lehman would work on  
23 the basis of committees and divisions. And then  
24 transactions and contracts were booked with companies  
25 and most of the people on the board of these companies

1           were people from finance, legal, so on and not the line  
2           managers.

3           Q.   Okay, that's fair.   So regardless of Lehman  
4           entity --

5           A.   Mm-hm.

6           Q.   -- you have no writings indicating that Lehman  
7           agreed to pay Dr. Marsoner for Formula 1, correct?

8   MR. JOHNSON:   Objection.   Leading.

9           A.   That is correct.   I used in this sentence my  
10          experience and the fact that I received information from  
11          Mr. Marsoner.   I distributed it and it created  
12          a dialogue with a follow up.   So he didn't get an email  
13          saying thank you very much, as I would have done in the  
14          same situations in my division.   If there was an adviser  
15          that I thought was no longer going to be utilized  
16          I would not have exploited that person, I would have cut  
17          the mail flow by saying thank you very much,  
18          I appreciate it.   It sounds like a great idea.   Feel  
19          free to take it where ever.   In this case, obviously,  
20          that didn't apply because who could this idea -- it  
21          could only be sold to Lehman or JP Morgan.

22          Q.   And normally you would have eventually documented  
23          an agreement to pay?

24          A.   Yes, absolutely.

25          Q.   In writing?

1 MR. JOHNSON: Objection. Leading.

2 A. Even post facto in the sense, as I told you,  
3 because we operated with a completely one sided  
4 methodology, and therefore I didn't need to document  
5 things immediately. I did because it is my practice to  
6 do these things, but it was not necessary because if we  
7 wanted we would do it. But the policy of the firm was  
8 if we used someone considerably, we would then price the  
9 services. If it was someone that was a trusted adviser  
10 with other contracts and so on, we would not have them  
11 work unless we intended to remunerate them. That  
12 doesn't define the amount.

13 Q. And then eventually you would negotiate a price  
14 with the adviser?

15 MR. JOHNSON: Objection. Leading.

16 A. Basically we would tell the adviser what the price  
17 was going to be.

18 Q. And document it in writing?

19 A. Yes.

20 MR. JOHNSON: Objection. Leading.

21 A. We would not pay not inconsiderable amounts without  
22 a valid reason and all documentation.

23 Q. And getting approval from the senior people at  
24 Lehman?

25 MR. JOHNSON: Objection. Leading.

1           A. In this particular case it was only the senior  
2           people in Lehman dealing with the person, so it was  
3           a matter of putting it down on paper and we would be  
4           told which company it would be and then, you know, we  
5           could make the payment. We could not make a payment  
6           without any form of contract or anything, but in many  
7           cases it would just be if there was an existing contract  
8           pertaining to a general adviser and so on, then we would  
9           write an addendum to that contract, dating it and so on,  
10          and saying as per point six we consider the BAWAG  
11          transaction a success and therefore associated with this  
12          the fee of 1 percent in the scale provided in, you know,  
13          and then we would pay.

14          Q. Okay. I want to make the declaration of  
15          Dr. Marsoner as the next exhibit. We are getting close  
16          to a break. What number is this?

17               (Exhibit Pignatti 4 marked for identification)

18          THE COURT REPORTER: 4.

19          Q. Okay. That is the document exhibited by  
20          Dr. Marsoner, it is actually exhibited to his motion.  
21          Have you seen this before, Mr. Pignatti?

22          A. No.

23          Q. No. I want to focus on a particular paragraph. If  
24          you go to paragraph E on the bottom of page 2.

25               "In 2005 I advised Lehman in my role as senior

1       adviser, both in emails and in telephone conversations,  
2       to continue Lehman's investment in F1, which service  
3       I explicitly provided in exchange for 10 percent of  
4       Lehman's revenues related to the transaction, as was  
5       customary under the agreements. Lehman agreed, both  
6       orally and by email, to this fee in exchange for my F1  
7       advice."

8             Do you see that?

9       A. Mm-hm.

10       Q. Do you know who agreed orally to pay Dr. Marsoner  
11       10 percent of Lehman's revenues?

12   MR. JOHNSON: Objection.

13       A. No I don't.

14       Q. Do you have any emails where Lehman agreed to pay  
15       Dr. Marsoner 10 percent of Lehman's revenues on F1?

16   MR. JOHNSON: Objection.

17       A. No I don't.

18       Q. Did Dr. Marsoner ask you to search for any such  
19       emails?

20   MR. JOHNSON: Objection.

21       A. No.

22       Q. Did he ask you to search for any documents  
23       indicating that he would be paid 10 percent of Lehman's  
24       revenues for F1?

25   MR. JOHNSON: Objection.

1 A. No.

2 MS. ALVAREZ: Okay, I think we are ready for a break.

3 THE VIDEOGRAPHER: We are going off the record. The time is

4 5:52 p.m.

5 (5:52 p.m.)

6 (Break taken.)

7 (6:07 p.m.)

8 THE VIDEOGRAPHER: We are back on the record. The time is

9 6:07 p.m.

10 BY MS. ALVAREZ:

11 Q. Mr. Pignatti, you testified earlier that you were  
12 involved in the negotiations of Dr. Marsoner's 2002 and  
13 2004 executive advisory agreements, is that right?

14 A. Yes.

15 Q. Okay. Did you negotiate many of these agreements  
16 for Lehman Brothers?

17 A. Mm-hm.

18 Q. Okay. The purpose of this agreement is to set  
19 forth the terms of the agreement, is that correct?

20 MR. JOHNSON: Objection. Leading.

21 A. Yes.

22 Q. The term determine or and duration of the  
23 retention?

24 MR. JOHNSON: Objection. Leading.

25 A. Yes.



1 Q. The responsibility of the consultants?

2 A. Yes.

3 MR. JOHNSON: Objection. Leading.

4 Q. Also the responsibilities of Lehman Brothers would  
5 be laid out in a consultant agreement correct?

6 MR. JOHNSON: Objection. Leading.

7 A. You have the agreements. They are standard  
8 agreements that specify the restrictions on the side of  
9 the adviser and not many on the side of the firm.

10 Q. Okay.

11 A. But they do specify the framework and then they  
12 have a sentence, all of them, that says anything else  
13 that comes out will have to be interpreted by the firm  
14 within the guidelines of the contract.

15 Q. Okay. And agreed to in writing, correct?

16 MR. JOHNSON: Objection. Leading.

17 A. Yes. But we have the contracts, we can go through  
18 them.

19 Q. We are going to look at them in a moment.

20 A. Mm-hm.

21 Q. I just want to get an understanding of how these  
22 agreements generally work. Let us talk about the 2004  
23 advisory agreement. The 2002, I am sorry. I don't  
24 believe it has been marked yet so we will go ahead and  
25 mark it. What number are we on?

1 THE COURT REPORTER: 5.

2 MS. ALVAREZ: Okay.

3 (Exhibit Pignatti 5 marked for identification)

4 BY MS. ALVAREZ:

5 Q. Now I represent to you that this exhibit was  
6 attached as exhibit C to Dr. Marsoner's motion.

7 A. Mm-hm.

8 Q. This is the 2002 agreement between Lehman Brothers  
9 Europe Limited and Thomas Marsoner, correct?

10 A. Yes.

11 Q. The date of the agreement is July 24, 2002?

12 A. Yes.

13 Q. One thing I was curious about, if you look at the  
14 bottom of the first page it says "page 71". Do you know  
15 why this agreement starts at page 71?

16 A. I have no idea.

17 Q. Okay.

18 Now, this agreement was signed by you on behalf of  
19 Lehman Brothers Europe Limited, correct?

20 A. Mm-hm.

21 Q. Correct?

22 A. Yes.

23 Q. Dr. Marsoner signed on his own behalf?

24 MR. JOHNSON: Objection. Form.

25 Q. Let's look at it. It says page 79 on the bottom.

1 A. Yes.

2 Q. Okay. And the period of this agreement, the  
3 commencement date, was March 1, 2002. And you can turn  
4 to, it is the second page of the agreement.

5 A. Mm-hm. Yes.

6 Q. And the agreement terminated on March 1, 2003. And  
7 you can see that on page 77. Do you see that?

8 Section 10.1 says:

9 "This agreement shall expire automatically on the  
10 first anniversary of the commencement date."

11 A. Yes.

12 MR. JOHNSON: Objection. Form.

13 Q. Okay. Now, the information --

14 A. If you notice, also, 10.3.

15 Q. "Notwithstanding clause 10.1 of this agreement,  
16 either party may terminate this agreement by giving 4  
17 weeks' notice writing."

18 I see that.

19 A. Mm-hm.

20 Q. Did anybody terminate this agreement prior to the  
21 termination date?

22 A. No. This is to point out the nature of these  
23 agreements and the flexibility, when I said it was  
24 totally one sided and therefore we did not need, you  
25 know, to really pre-agree everything when in the

1       nebulous world of investment banking -- because all of  
2       the ammunitions, I mean you can see that everything  
3       could be terminated four weeks. This is not  
4       a standard -- it is a standard for this industry.

5       Q. So it is a standard agreement that Dr. Marsoner --  
6       standard consultancy agreements contain provisions like  
7       this?

8       A. Yes.

9       MR. JOHNSON: Objection.

10      A. The value in the agreement is in the relationship  
11      with the firm because, being totally one sided, he was  
12      certainly used to the fact the parameters overall were  
13      spelt out. But his entitlement was totally  
14      discretionary on the firm's side.

15      Q. Okay. Well, let's take a look at section 3 of this  
16      agreement. Section 3 describes the payments that would  
17      be made by Lehman Brothers Europe to Dr. Marsoner,  
18      correct?

19      A. Payments, mm-hm, yes.

20      Q. Is that a yes?

21      A. Yes.

22      Q. Okay. If you look at 3.1.1, provides that Lehman  
23      Brothers Europe would pay Dr. Marsoner a retainer fee of  
24      USD 200,000.

25      A. Yes.

1 Q. Right. Okay.

2 3.1.2 identifies what Lehman Brothers Europe would  
3 pay Dr. Marsoner in connection with Telekom Austria,  
4 which was a specific transaction?

5 A. Yes.

6 Q. Alright. The next provision, 3.1.3, identifies  
7 what Lehman Brothers Europe would pay in connection with  
8 BWBG, correct?

9 MR. JOHNSON: Objection. Form.

10 A. Yes.

11 Q. Okay. Section 3.2.1 states:

12 "In the event that Lehman Brothers requires the  
13 Advisor to provide the Services pursuant to this  
14 Agreement in relation to specific transactions other  
15 than those referred to in clauses 3.1 [I assume it is 2,  
16 it looks like this draft is cut off] and 3.1.3 above,  
17 then Lehman Brothers and the Advisor shall agree in  
18 writing the amount and terms of any payments to be made  
19 to the Advisor for such Services, provided that any such  
20 additional payment will be based on the Advisor's  
21 contribution, measured in terms of the fee-income  
22 generated to ... "

23 And then it looks like this agreement is cut off, do  
24 you see that?

25 A. Yes. I am very familiar, because you can imagine

1       how many I signed over the decade that I was  
2       responsible.

3       Q.   Okay.

4       A.   This is the catch all that I was describing before.

5       Q.   Mm-hm.

6       A.   As the agreement, you will agree with me, is  
7       totally one sided. We would have annual agreements.  
8       You know how long it takes for these major transactions  
9       to move ahead or not move ahead.

10      Q.   Mm-hm.

11      A.   So it would be too tedious to do a continuous  
12      negotiation on everything that comes up. What you do is  
13      you list the major things that were covered because they  
14      are probably -- I think Telekom Austria was probably  
15      already a year old, from the previous agreement if there  
16      was one. It was the privatization of a major telecom  
17      company, and BAWAG took a year to get done.

18           During this period there would be many things where  
19      the adviser would say "can I work on this?" I would ask  
20      team members, and this is on the advisory side --

21      Q.   Mm-hm.

22      A.   -- does this really make sense? Are you really  
23      going to use him? What is the contribution and  
24      monitoring? And so on. And then I would ratify what  
25      I thought, in my judgment or, if more people were

1 involved, in our judgment, was the contribution and in  
2 the following contract, or even in this one, I would say  
3 as per 3.2.1 we now agree to pay you, you know,  
4 a million dollars for securing the Formula 1 advisory  
5 mandate, okay, something like that.

6 Q. Okay.

7 A. Not necessarily when it happened, the day, or don't  
8 lift your pen until I have sent you a confirmation and  
9 so on, okay.

10 Q. Okay.

11 A. But this refers to advisory contracts which were,  
12 as I said, within my powers because my division was  
13 paying it out of revenues, okay. So here the  
14 USD 200,000 would have come out of my annual budget,  
15 because it was a guarantee. And then anything else, you  
16 will see, is really a success fee and therefore, which  
17 is actually paid the moment the client sends the money  
18 to settle the invoice. You know, so unless Telekom  
19 Austria paid us the, I don't know, 7 million Euro  
20 advisory fee, of which 700,000 would go to Mr. Marsoner  
21 a month later, okay. But first the cash came in.

22 Q. Okay.

23 A. Okay. So --

24 Q. Let me ask you, you said the agreement is  
25 dated July 24, 2002?

1 A. Yes.

2 Q. At this point had Lehman acquired the shares, the  
3 Formula 1 shares?

4 A. Yes.

5 Q. Okay.

6 A. I think so. I go without -- because I can't use my  
7 notes.

8 Q. Okay.

9 A. It is public information.

10 Q. Okay, I will look it up. I want you to base it on  
11 what you remember.

12 A. Yes. On what I remember, yes.

13 Q. Okay so --

14 A. But we were doing fixed income, legal troublemaking  
15 work.

16 Q. Okay.

17 A. So it didn't need a senior adviser to say on this  
18 article of association in Guernsey we actually have the  
19 right to do this and therefore, you know, and start.  
20 That was really Sherratt and the two Patricks who would  
21 say we have a right to verify the accounts, we have  
22 a right and we would exercise any right we had until we  
23 were able to modify.

24 Q. Okay. So Formula 1 wasn't added to this agreement?

25 A. No, because at that point it was not really part of



1 the core business of my division, was advisory. Seeking  
2 new paid assignments to provide intelligence, solutions  
3 and so on.

4 Q. Okay.

5 A. And you see the nature of these engagements, one is  
6 a telecom deal, the other is a financial institution,  
7 both in Austria. And we didn't have any senior Austrian  
8 after Mr. Marsoner retired from full service and  
9 therefore I retained his services.

10 Q. Okay did. Dr. Marsoner ask for Formula 1 to be  
11 added to this agreement?

12 MR. JOHNSON: Objection. Form.

13 A. He probably did in that sense. But he was probably  
14 told there was nothing tangible and unless JP Morgan and  
15 us had a budget at the corporate level, because there  
16 wouldn't be investment banking pay out of goodwill for  
17 the mistake of another division, so we were servicing  
18 this but I didn't have a budget to -- in fact I would go  
19 to Peter Sherratt and say legal, we need this, because  
20 the expenses would be billed upstairs, he sat on the  
21 floor above me.

22 Q. Okay.

23 A. So my division was not even paying for the travel  
24 to go and see Formula 1 and so on, because we didn't  
25 have a matching revenue.

1 Q. Okay. So if Dr. Marsoner had asked would you be  
2 the person that he would have asked?

3 MR. JOHNSON: Objection. Leading.

4 A. For the advisory side, yes.

5 Q. Okay. Do you recall whether he asked you to add  
6 Formula 1 here? Even though I understand that it  
7 wouldn't be appropriate did, he ever ask you?

8 MR. JOHNSON: Objection. Form.

9 A. I think he did --

10 Q. Okay.

11 A. -- say "can I work on Formula 1?" and I said it  
12 isn't a profit center for me, so what we have do is  
13 reach an understanding, it is a consortium. We have  
14 a few pooled expenses because for example legal we were  
15 sharing with the three banks. So any expense, we only  
16 had 25 percent of the loan. So with that we didn't pay  
17 for anything 100 percent, because it would have been  
18 disproportionate.

19 Q. Mm-hm.

20 A. So I said don't even bother with the Germans,  
21 because they didn't agree to anything. But at least  
22 with JP if I get them in, I will speak about it  
23 internally and see if we can add it. Maybe it wouldn't  
24 have been part of this, because this was one of our  
25 companies in advisory, but we would have done something.

1 As it happens, it was kind of blocked.

2 Q. Okay.

3 A. I think I still retained some advice on Formula 1  
4 specifically, not because I wanted to short change  
5 Thomas in any way, but because I was still paying him  
6 a retainer of 200,000, which covered, as you can see in  
7 the agreement, whatever he agreed to provide, you know.  
8 Even without, you know, in the normal course of  
9 business. But not high intensity thing. But he did  
10 provide intelligence on this Concordia agreement which  
11 was the break out of the teams create their own  
12 Formula 1.

13 Q. And the Concorde agreement, just to clarify, that  
14 was later on, that was in 2008?

15 MR. JOHNSON: Objection. Leading.

16 A. It started already. The moment the banks  
17 repossessed, and so on, as you can imagine, the teams  
18 revisited their contribution in because they were losing  
19 money in Formula 1, and Formula 1 it became apparent was  
20 making money, so they started to wonder whether, you  
21 know, something could be renegotiated. First they went  
22 to Bernie and then they sent Goldman Sachs our way, as  
23 if we could have done, not that we were interested in  
24 paying them more, but even if we did agree to pay them  
25 more we did not have the tools to change the agreements

1 because we realized that we had some negative powers but  
2 not positive powers to tell Bernie what to do.

3 Q. Okay.

4 A. So that is why we didn't go for immediate sale, we  
5 didn't do anything, because we had little to sell. We  
6 had an economic interest in Formula 1. Without even the  
7 ability to distribute dividends.

8 Q. Okay.

9 A. To force the distribution of dividends.

10 Q. Okay. Let us look --

11 A. So he did some advisory things, covered by this,  
12 and, you know, to be officialized in a different way.

13 Q. And you paid Dr. Marsoner, Dr. Marsoner was paid  
14 a retainer for this 2002 agreement?

15 A. He was paid for the agreement and the agreement  
16 reflects the services.

17 Q. Do you know if there was ever an allotment made in  
18 Lehman's revenues for payment to Dr. Marsoner for  
19 Formula 1?

20 MR. JOHNSON: Objection. Leading.

21 A. I have no idea.

22 Q. Okay. Let us look --

23 A. Because the accounting was completely separate from  
24 the banking division.

25 Q. Okay. So let us let's take a look at the 2004

1 agreement. Would that be exhibit 6?

2 THE COURT REPORTER: Yes.

3 (Exhibit Pignatti 6 marked for identification)

4 Q. This agreement was also exhibit C to Dr. Marsoner's  
5 motion. We will mark it exhibit 6. Just for the record  
6 this agreement also begins in the middle, it is page 64,  
7 just so we are clear. It is dated February 13, 2004 and  
8 the agreement is between Thomas Marsoner and Lehman  
9 Brothers Europe Limited, do you see that?

10 A. Mm-hm, yes.

11 Q. Okay. You, as you testified earlier, also  
12 negotiated agreement, correct?

13 A. Yes.

14 Q. Who else was involved in the negotiations?

15 A. On this one I think it was just myself and then  
16 I was liaising with or reporting to the executive  
17 committee for investment banking who was made aware of  
18 all, I mean I wouldn't have a session just on the  
19 Marsoner agreement, but we would go through, you know,  
20 the budgeting and February sounds like a classic date in  
21 investment banking as bonuses are paid as of 31 January.  
22 So in February you finalize the budget for the year and  
23 you put in everything and I probably had, you know, the  
24 approval for this and all of the other mandates because  
25 they were annual so we got them all rolled over and then

1       went through, maybe with some of my team members, to get  
2       their opinion as to the size of the retainer and  
3       I noticed that it had gone down. So --

4       Q. I am going to ask you, was Aaron Johari involved in  
5       the negotiations of this agreement?

6       A. Yes.

7       Q. What about Peter Sherratt?

8       A. No, not at this level. Peter was involved in  
9       negotiations whenever -- I think in different  
10      situations, when someone was asked to step down as  
11      a managing director or something and so on, and then it  
12      was suggested to me that we as part of their severance  
13      retain them. So it wasn't really part of the divisional  
14      strategy and certainly I didn't want that in my budget.

15      Q. What about Marco Roggero?

16      A. Marco Roggero was, yes.

17      Q. What was his role in the negotiations?

18      A. His role in the negotiations was to help me with --  
19      I mean I wouldn't actually write the contract myself,  
20      I would just give the bullet points.

21      Q. Mm-hm.

22      A. And Marco Roggero would make sure we got all of the  
23      signatures deciding which company was going do it,  
24      making sure that it was coherent with the overall budget  
25      so that all of them added to the amount that we had

1 agreed.

2 Q. Mm-hm.

3 A. And not exceeded. So it was the COO of investment  
4 banking.

5 Q. Okay. What about William McKeown?

6 A. McKeown?

7 Q. McKeown.

8 A. He is the equivalent of Marco Roggero in New York.

9 Q. Okay.

10 A. So the way New York used Marco Roggero as chief  
11 operating of investment banking so that they would then  
12 do the budget for the two, because we were completely  
13 separate from the US. So they just added everything up  
14 and made sure, for example, that if we paid this kind of  
15 money to the European advisers, the Americans got  
16 something similar.

17 Q. And Graham Wilson?

18 A. Graham Wilson was on the finance side. So there  
19 was, you know, it is 350 people in investment banking  
20 Europe. And they did everything, and I was also a line  
21 manager. I used to get mandates, execute them and so  
22 on, and do this, supported by a lot of people.

23 Q. Okay. Do you know if Tom Marsoner ever asked you  
24 -- before we get there, let us look at section 3 of this  
25 agreement. So we are looking at section 3 of exhibit 6.

1 A. Yes.

2 Q. It is titled "compensation payable to the  
3 consultant", correct?

4 A. Yes.

5 Q. Section 3 lays out how much Dr. Marsoner would be  
6 paid under the terms of this agreement, correct?

7 A. Absolutely. And you will find that, in terms of  
8 set up, identical to the previous one with a fixed  
9 amount which has now been reduced.

10 Q. Mm-hm.

11 A. And I don't recall whether we didn't do well the  
12 year before so they cut my budget overall or Austria was  
13 less interesting, you know, these things depended on  
14 many things.

15 Q. Mm-hm.

16 A. Then you have the identified transactions.

17 Q. And Formula 1 is not identified in any of these  
18 paragraphs, correct?

19 A. No.

20 MR. JOHNSON: Objection.

21 Q. Do you recollect whether Dr. Marsoner requested to  
22 be added to this agreement?

23 MR. JOHNSON: Objection.

24 A. I do not, I do not remember.

25 Q. Your role in this agreement, as in the 2002, was to



1 talk, to go back and forthwith Marsoner with the  
2 agreement, correct?

3 MR. JOHNSON: Objection. Leading.

4 A. Back and forth in the sense that pretty much  
5 I would be on, you know, I have long conversation was  
6 the team on each of the projects, okay, some of which  
7 I was directly involved, others I was not. I would form  
8 an important opinion and then I would do one session  
9 with him, maybe for an hour, and tell him what was on  
10 offer. It is not that I was in a position where the  
11 world would end, you know, without Dr. Marsoner.

12 Q. But he would review a draft and provide you  
13 comments, right?

14 A. Absolutely.

15 MR. JOHNSON: Objection. Leading.

16 Q. And did he ever request that Formula 1 be added to  
17 the agreement?

18 MR. JOHNSON: Objection.

19 A. I do not remember. In many cases we do the meeting  
20 with Marco Roggero and Graham Wilson and so on, and then  
21 I say okay, done, next and then they would make sure, do  
22 the back and forth, not even with me, you know, up to  
23 or, and/or, these things I did not deal with.

24 Q. Right. But would they communicate with  
25 Dr. Marsoner about the agreement?

1 A. Yes, they would, directly. Johari as well.

2 Q. Okay. If Dr. Marsoner had requested that Formula 1  
3 be added to the agreement would they bring that request  
4 over to you?

5 MR. JOHNSON: Objection. Leading.

6 A. He wouldn't ask them. They wouldn't even know what  
7 Formula 1 was.

8 Q. So he would ask you?

9 A. It would have to be me. I would speak to the  
10 various teams and so on. The COO of finance and so on  
11 just worked, taking for granted that these were the  
12 transactions and that was the economics, and then making  
13 sure the contract was correct, the dates were right and  
14 so on, but he wouldn't negotiate on, you know,  
15 situations. Everything was covered by high  
16 confidentiality in some cases. Only I and Marco Roggero  
17 had the names of the companies for which we were  
18 engaged.

19 Q. Okay. But you don't recall him asking you that, to  
20 add Formula 1?

21 MR. JOHNSON: Objection.

22 A. I don't recall, that doesn't mean he didn't do it.

23 Q. That is okay. Okay, so Dr. Marsoner also executed  
24 similar agreements in 2006 and 2007 with Lehman Brothers  
25 Europe, correct?

1 A. You are telling me. In this sense I was no longer,  
2 you know, at that point responsible for that division  
3 and therefore I would have known about it, in fact I was  
4 aware, because I was on the operating committee and  
5 therefore I was still informed of every significant  
6 transaction that Lehman was involved with and including  
7 who was following it.

8 Q. Okay. I do want to show you a copy of the 2006  
9 agreement, so we will mark this as exhibit 7. And keep  
10 that one close, because I am going to want to you  
11 compare the two in a minute.

12 (Exhibit Pignatti 7 marked for identification)

13 Q. Now I understand you didn't negotiate that  
14 agreement, correct?

15 MR. JOHNSON: Objection. Leading.

16 A. No.

17 Q. This would have been Christian Meissner?

18 MR. JOHNSON: Objection. Leading.

19 A. Yes, and the same team of people.

20 Q. Okay. Christian Meissner would have been the one  
21 having the conversations with Dr. Marsoner about what to  
22 include and what not to include?

23 MR. JOHNSON: Objection. Leading.

24 A. Yes.

25 Q. Okay. Let us look at paragraph 3, which is similar

1 to -- I should say section 3, which is similar to  
2 section 3 from the 2004 agreement, which is exhibit 6,  
3 which you have kept in front of you.

4 A. Yes.

5 Q. Okay. I want you to focus on what you called the  
6 catch all provision which is paragraph 3.7 in the 2006  
7 agreement, do you see that?

8 MR. JOHNSON: Objection.

9 A. Mm-hm.

10 Q. Now, I would like to you take a look at the catch  
11 all provision in the 2006 agreement that you did  
12 negotiate?

13 A. Mm-hm.

14 Q. That one is paragraph 3.9. And that is in  
15 exhibit 6. So paragraph 3.9 in exhibit 6, which falls  
16 on page 66 of this document, do you see how the last  
17 line is cut off?

18 A. 3.9.

19 Q. 3.9, you see how it is cut off there?

20 A. Yes, "after the date of this agreement --"

21 Q. 3.9.

22 A. Yes.

23 Q. Right, you see how that very last line is cut off?

24 A. Mm-hm.

25 Q. I really can't tell if there was more there. If

1       you look, I would like to compare that with the catch  
2       all provision in the 2006 agreement?

3       A.   Which would be VII.

4       Q.   VII.

5       A.   Yes, it seems like it is capped at 2.5 million.

6       Q.   Right. Is there a similar cap in the 2007  
7       agreement?

8       A.   You are asking me. It is ten years later. One of  
9       our advisers, which, I wish I knew. It wasn't my --  
10      I wouldn't have capped it.

11      Q.   Okay.

12      A.   In the sense that I had complete discretion, as you  
13      read it, to do whatever I wanted, why cap it. I mean  
14      some of the advisory contracts, the Telekom Austria, we  
15      must have made, maybe 25 million Euros, so 10 percent  
16      would have been okay. But --

17      Q.   Do you have another copy of this agreement that  
18      might not be cut off? The 2004 agreement?

19      A.   I should have the -- I will have to go and check on  
20      the server whether I have the, you know, the original  
21      email, because it must have been sent to me. Whether  
22      I have the signed copy, the answer is no.

23      Q.   Okay.

24      A.   Because I didn't need to. Marco Roggero and so on,  
25      they would store all of the official and so on, they

1 wouldn't send me back a signed copy.

2 Q. Okay. We would, to the extent that Dr. Marsoner  
3 has a copy, this agreement if you flip through the pages  
4 is cut off on the bottom on almost every page.

5 A. Mm-hm.

6 Q. We would request a copy that is not cut off. Thank  
7 you, Mr. Pignatti.

8 So I want to move away from these agreements  
9 a little and talk about BAWAG.

10 A. Mm-hm.

11 Q. You testified earlier that this was an investment  
12 banking transaction that took place in 2006, correct?

13 A. Correct.

14 Q. And Dr. Marsoner advised Lehman Brothers Europe on  
15 Cerberus' acquisition of BAWAG?

16 A. Absolutely.

17 Q. Is that right?

18 A. Yes.

19 Q. And Lehman Brothers Europe agreed to pay Marsoner  
20 for his assistance with BAWAG?

21 A. Yes.

22 Q. Correct.

23 A. A percentage of the advisory fee. So just to  
24 clarify his role, he was an adviser to Lehman Brothers  
25 in the sense that we were paying him and we had signed

1 a contract with Cerberus to provide advisory service to  
2 Cerberus. In reality, he was interacting directly with  
3 Cerberus.

4 Q. Okay, okay. And it was typical to pay an adviser  
5 a percentage of those advisory --

6 MR. JOHNSON: Objection. Leading.

7 A. In investment banking, yes.

8 Q. Okay. Let us look at another exhibit. It is  
9 Lehman LEH 203, is the Bates number. This may have been  
10 marked during Sherratt's deposition, I don't recall.  
11 But we will mark this as exhibit 8.

12 (Exhibit Pignatti 8 marked for identification)

13 Q. Mr Pignatti, this is an email from you to David  
14 Stonberg. Michael Odrich and Anthony Tutrone are CC'd  
15 on the email?

16 A. Mm-hm.

17 Q. It is dated May 24, 2007 and the subject line is  
18 "BAWAG IBD fee", do you see that?

19 A. Yes.

20 Q. What is IBD?

21 A. Investment banking division.

22 Q. So these are the investment banking fees you were  
23 referring to?

24 A. Er, there is --

25 MR. JOHNSON: Objection. Leading.

1 A. It is so small I am trying to decipher the text,  
2 and I will answer in a second.

3 Q. Okay.

4 A. Yes, I do remember the whole thing. It explains  
5 a bit how we work. So this was me --

6 Q. Mm-hm.

7 A. -- writing to people on the principal side, okay,  
8 those responsible for the Lehman Brothers funds. By  
9 then I had joined them, so this was like a flashback,  
10 saying to them I had entered on behalf of the investment  
11 banking division into an advisory contract, which you  
12 have seen, which basically spells out exclusively the  
13 sharing of this adviser on the advisory fees. In  
14 addition, this person was instrumental to getting other  
15 pieces of the bank, including yours, involved in  
16 a transaction that closed. So here you find Stonberg is  
17 the head of co-investments, because the co-investment  
18 fund put money with Cerberus in the BAWAG deal.  
19 Mike Odrich was the American head of all of the funds  
20 and Anthony Tutrone was his deputy. So what I am asking  
21 them is to accept, you know, to pay a fee to  
22 Mr. Marsoner to for bringing in other parts of the bank.  
23 So it was not included. I wouldn't have paid it out of  
24 my investment banking budget, because I didn't  
25 receive -- you know, plus at that point they had made



1 an investment, it wasn't even clear. It didn't turn out  
2 to be a good investment, either, no. But it was common  
3 not to utilize, because Marsoner couldn't say "you know  
4 what, there are many funds around the world. I am  
5 interested in keeping the relationship with Cerberus,  
6 frankly, why should I bother alerting the Lehman funds  
7 of the opportunity, inviting them to Austria, doing the  
8 management presentation and so on", which he did.

9 Q. Mm-hm.

10 A. And they, I think, decided to pay something less  
11 than this, but they did pay him something. That is what  
12 I was referring to before. So I would do this before  
13 the transaction closed to make sure that I wasn't  
14 misrepresenting and the adviser felt cheated because he  
15 had done extra work and so on. This I did with every  
16 other division, including head office upstairs, you  
17 know. So if there was something and I was using  
18 an adviser who was paid by investment banking, I would  
19 make sure that they wanted to chip in or I would say  
20 candidly to the adviser, you know what, they don't  
21 really think you are adding value so you won't get paid.  
22 Do what you want but don't come back to me.

23 Q. Okay. You didn't send a similar email seeking  
24 approval of Dr. Marsoner's payment for Formula 1?

25 MR. JOHNSON: Objection. Leading.

1 A. No I did not. Although I did convey the  
2 information and things, but then it was no longer my  
3 responsibility to even sign these agreements with him.  
4 I was no longer the nominated person with whom he had to  
5 get everything approved. So apart from the fact that we  
6 had known each other for a long time and so on, I wasn't  
7 going to step in and create a mess by having someone who  
8 was running another division, who was making agreements  
9 on services, it was too big an organization for that.

10 Q. Okay, so you weren't the guy who could approve  
11 payment to Marsoner on Formula 1?

12 MR. JOHNSON: Objection. Leading.

13 A. Not after, you know, the advisory services were  
14 rendered, but for advice on whether to sell a principal  
15 position on inherited from a bad loan. In selling it  
16 who was in investment banking or the funds not exposed  
17 to the asset, say here is a million. What I would have  
18 done is I would have conveyed the information to Tom  
19 Bernard, you know, and the people who had to make  
20 a decision, and to the best of my knowledge, they did  
21 take up --

22 Q. Okay.

23 A. -- the information. They didn't say sorry, we  
24 don't know who this guy is, we don't care what he says  
25 and so on. I kind of left it to them and said this is

1 a credible adviser that we have had for a long, long  
2 time and this is his opinion. And to the best of my  
3 knowledge that opinion was not thrown away and everybody  
4 said you know, we know exactly what is happening and we  
5 have decided to sell and so on.

6 Q. But to your knowledge was payment to him, payment  
7 of ten percent of Lehman's revenues on Formula 1,  
8 approved?

9 MR. JOHNSON: Objection. Form.

10 A. I have absolutely no idea. My own impression is  
11 that 10 percent is more of an advisory type of agreement  
12 when you are sharing revenues. In this particular case  
13 I wouldn't call the sale of Formula 1 a revenue, you  
14 know, in the sense that we had not been repaid  
15 300 million loan for 2002 to 2006, 8 years of interest  
16 accrued and so on.

17 Q. Mm-hm.

18 A. So it wasn't -- you know, it sounds to me like,  
19 well, first of all it would be very difficult to define  
20 on Formula 1 the gain.

21 Q. Okay.

22 A. What you can do is a first derivative of the gain  
23 and say had we sold we would have made less than had we  
24 not sold, and therefore this is the implied gain. But  
25 in absolute accounting terms it would have been a much

1 more complicated exercise. So I doubt that -- a fixed  
2 amount of what?

3 Q. Right, okay. So let us talk about Formula 1 in  
4 2006. We are going to jump one year head, okay?

5 A. 6.

6 Q. Formula 1 had refinanced its debt in 2006, that's  
7 correct?

8 MR. JOHNSON: Objection. Leading.

9 A. Yes.

10 Q. There was a bond offering in 2001 by Formula 1?

11 MR. JOHNSON: Objection. Leading.

12 A. I believe so. This was by then completely out of  
13 my domain. I mean I never did fixed income, so the bond  
14 issue would be the fixed income.

15 Q. But it was pretty public, the bond offering?

16 A. Sure.

17 MR. JOHNSON: Objection. Leading.

18 Q. And that bond offering resulted in dividends being  
19 paid out to shareholders of Formula 1?

20 MR. JOHNSON: Objection. Leading.

21 A. Sure it was a --

22 Q. We established earlier that Lehman Commercial Paper  
23 was a shareholder at that point?

24 MR. JOHNSON: Objection. Leading.

25 Q. Yes or no?

1 A. You are telling me? I didn't follow who.

2 Q. I am --

3 MR. JOHNSON: We didn't establish it.

4 Q. Let me ask you the question. I think you answered,  
5 but you are nodding so we need to verbalize it. There  
6 was a bond offering by Formula 1 in 2006?

7 A. Yes.

8 MR. JOHNSON: Objection. Leading.

9 A. I remember the bond offering was to finance among  
10 other things a dividend distribution. I do not know  
11 which Lehman entity booked the transaction, how much  
12 they received and so on.

13 Q. Okay.

14 A. Because it was not part of my domain any more.

15 Q. Okay, I understand that. But Lehman Brothers did  
16 receive a dividend distribution as a result of that bond  
17 offering?

18 MR. JOHNSON: Objection. Leading.

19 A. Leading. I don't know.

20 MS. ALVAREZ: You still need to answer the question.

21 MR. JOHNSON: You said asked and answered.

22 MS. ALVAREZ: No, you said asked and answered.

23 THE COURT REPORTER: One at a time, please.

24 MS. ALVAREZ: I am hearing two people.

25 MR. JOHNSON: Could you read back please.

1 THE COURT REPORTER:

2 "Question: Formula 1 had refinanced its debt in  
3 2006, that's correct?

4 "MR. JOHNSON: Objection. Leading.

5 "Answer: Yes.

6 "Question: There was a bond offering in 2001 by  
7 Formula 1?

8 "MR. JOHNSON: Objection. Leading.

9 "Answer: I think so. This was by then completely  
10 out of my domain. I mean I never did fixed income, so  
11 the bond issue would be the fixed income.

12 "Question: But it was pretty public?

13 "Answer: Sure.

14 "MR. JOHNSON: Objection. Leading.

15 "Answer: And that bond offering resulted in  
16 dividends being paid out to bondholders of F1.

17 "MR. JOHNSON: Objection. Leading."

18 "Answer: Sure it was a --"

19 A. Not bondholders; shareholders.

20 THE COURT REPORTER:

21 "Question: We established earlier that Lehman  
22 Commercial Paper was a shareholder at that point?

23 "MR. JOHNSON: Objection. Leading.

24 "Question: Yes or no?

25 "Answer: You are telling me?"

1 THE COURT REPORTER: And that is when everyone started  
2 talking over each other.

3 MS. ALVAREZ: At the time of the bond offering Lehman held  
4 shares in Formula 1, correct?

5 MR. JOHNSON: Objection. Leading.

6 A. Yes.

7 Q. So Lehman received distributions in form of  
8 dividend as a result of the bond offering?

9 MR. JOHNSON: Objection. Leading.

10 A. I assume so.

11 Q. It was a very public bond offering?

12 MR. JOHNSON: Asked and answered.

13 A. You know as much as I.

14 Q. To your knowledge, was Dr. Marsoner compensated for  
15 Lehman's recovery of dividends as a result of the bond  
16 offering.

17 MR. JOHNSON: Objection. Form.

18 A. I have no idea.

19 Q. Okay. Let us take a look at another document that  
20 was produced by Dr. Marsoner. It is labeled Marsoner 8  
21 through 31. And I have now lost count. Is this 9?

22 MR. HORWITZ: 9, yes.

23 MS. ALVAREZ: Okay, so we will mark this as exhibit 9.

24 (Exhibit Pignatti 9 marked for identification)

25 BY MS. ALVAREZ:

1 Q. If you turn to, it starts at the bottom of Marsoner  
2 19 to the top of Marsoner 20. The bottom of Marsoner 19  
3 is an email from Dr. Marsoner to Mr. Pignatti. Magnoni,  
4 Ruggero Magnoni is CC'd and it is dated January 14,  
5 2013?

6 A. You are on page?

7 Q. Marsoner 19 on the bottom. If you look at how it  
8 is labeled. The email starts on the very bottom and the  
9 text of the email continues on Marsoner 20?

10 A. Okay.

11 Q. So the email is from Dr. Marsoner to Mr. Pignatti.  
12 Mr. Magnoni is CC'd?

13 A. 15, sorry, it is now?

14 Q. Yes, a recent one.

15 A. This year, yes.

16 Q. January 14, 2015. I am just going to read this  
17 into the record, Dr. Marsoner says:

18 "Having discussed along the way that I --"

19 A. Having discovered.

20 Q. "Having discovered along the way that I ought to  
21 have a claim in the US for the services that I have  
22 provided I have decided to pursue a claim in respect of  
23 the LB/F1 matters. Though it will be a late filing,  
24 I believe that I will be able to sustain a claim in the  
25 US, primarily since no bar date has ever validly been



1 served upon me."

2 And then in the next paragraph he says:

3 "With reference to our discussions around this,  
4 I would be very grateful if you could please look at the  
5 draft letter attached, check to confirm it reflects  
6 reality accurately, mark it up where ever you think it  
7 might not, and send the scanned, signed version back to  
8 me."

9 A. Yes.

10 Q. Do you see that?

11 A. Mm-hm.

12 Q. Is this when Dr. Marsoner sent you his notes on  
13 what might be included in a submission to the court?

14 A. Yes, I believe it is.

15 Q. Okay. Would they have been attached to this email,  
16 would his notes have been attached to the email?

17 A. I actually don't recall. Is this the text that was  
18 actually submitted?

19 Q. We can compare it. Take a moment and look at it.

20 You see this text follows an email from you to  
21 someone named Asha?

22 A. Mm-hm.

23 Q. Saying:

24 "Asha could you send the text below to Dr. Marsoner  
25 with my stamped signature."

1 A. I am just checking if, because I know that I made  
2 substantial changes to --

3 Q. Okay.

4 A. So I don't know at what stage. I was probably  
5 traveling. So my assistant does the -- January 7, and  
6 this is, this one that I have is dated January 7.

7 Q. Mm-hm.

8 A. But the email seems to be February.

9 Q. I see that. The email is February 10, 2015.

10 A. Mm-hm.

11 Q. The signed letter submitted to the court is  
12 dated January 7, 2015. It looks to me that this text is  
13 the same as what is in the final?

14 A. Yes, it looks to me as well, but I haven't done,  
15 you know, line by line.

16 Q. Okay. What I am trying to figure out is whether  
17 Dr. Marsoner would have sent you his thoughts attached  
18 to the email dated January 14, 2015 that starts on the  
19 bottom of Marsoner 19 and continues to the top of  
20 Marsoner 20.

21 MR. JOHNSON: Objection. Form.

22 A. To Marsoner 20. 28 January. This is 10 February,  
23 so it is two weeks later. I would need to check.

24 Q. Okay.

25 A. Because I remember doing changes on the basis of --

1 Q. Okay.

2 A. -- other texts.

3 Q. We have in the past requested from Dr. Marsoner  
4 this document, I am sure, so we would renew our requests  
5 to Dr. Marsoner.

6 MR. JOHNSON: You have done.

7 MS. ALVAREZ: I am sorry?

8 MR. JOHNSON: You have done.

9 MS. ALVAREZ: Well, we don't have Dr. Marsoner's notes or  
10 suggestions and what he would have suggested  
11 Mr. Pignatti to include in his letter, so we are  
12 renewing that --

13 MR. JOHNSON: Yes you do have them.

14 MS. ALVAREZ: I'm still talking.

15 MR. JOHNSON: Okay.

16 MS. ALVAREZ: We are renewing our request and we would  
17 request that you confirm you have done a reasonable  
18 search of Dr. Marsoner's records for these documents.

19 MR. JOHNSON: You have these letters, that is what I am  
20 saying.

21 MS. ALVAREZ: We will put our requests in another letter --

22 MR. JOHNSON: Okay.

23 BY MS. ALVAREZ:

24 Q. Mr. Pignatti, the second paragraph on the tomorrow  
25 of email, Marsoner 120, begins "with reference to our

1 discussions around this". What discussions did have you  
2 with Dr. Marsoner about this?

3 MR. JOHNSON: Asked and answered.

4 A. Hmm?

5 MS. ALVAREZ: You can go ahead and answer the question.

6 MR. JOHNSON: It is asked and answered.

7 MS. ALVAREZ: And that is for the record. The witness can  
8 go ahead and answer the question. The record is clear.

9 A. The reference to our discussion was that I  
10 forewarned individually. This is copied to two people  
11 of his past.

12 Q. Okay.

13 A. Prior, I had received a phone call from him, who  
14 had explained how these things work and that a court, it  
15 has to be done, and whether I would be prepared in case  
16 they had a follow up. It might have been  
17 a considerable, you know, request so that I wouldn't  
18 take it too lightly and just, you know, assuming it was  
19 going to be done with three paragraphs and so on.

20 Q. Okay.

21 A. And then he said would you be, you know, amenable  
22 to do this and I said yes, and I got Mr. Magnoni, who  
23 had had the same request, asking, you know, what did  
24 I recall, because it was out of the blue after ten  
25 years. Not that I had lost, completely, contact with

1 Thomas, but it was certainly not frequent. And then we  
2 agreed to do it. And I can't remember in which form  
3 I was given a gist of what pertained to my deposition,  
4 but I remembered that there were certain things that  
5 I said, you know, this I am not in agreement with, in  
6 the sense that I don't know because it was after my  
7 days.

8 Q. Okay.

9 A. Okay.

10 Q. So if you take a look, you responded to this email  
11 on January 31, 2015. Your response is actually on the  
12 prior page, on Marsoner 19. Do you see there is  
13 an email from you to Dr. Marsoner dated January 31,  
14 2015. Do you see that?

15 A. This is in Marsoner 20.

16 Q. Right.

17 A. Page?

18 Q. The original email was Marsoner 20.

19 A. Mm-hm.

20 Q. The email from Dr. Marsoner to you?

21 A. Okay.

22 Q. And then on Marsoner 19 is your response to his  
23 email, do you see that?

24 A. I see a 10 February.

25 Q. Your email response is January 31.

1 "Dear Thomas, I can't sign... risking perjury...  
2 sign a statement."

3 Do you see that? It is on Marsoner 19. Right  
4 there, you have it.

5 A. 31 January.

6 Q. Yes.

7 A. Mm-hm.

8 Q. If you see, Dr. Marsoner sends his original email  
9 on 14 January?

10 A. Okay, so it is the --

11 Q. Was the email dated January 31 your response?

12 A. I can't remember. There was a, sort of a back and  
13 forth of texts and then I gave my green light to a text  
14 amended, which is the one that went.

15 Q. Okay, so you and Dr. Marsoner exchanged text  
16 messages on the subject?

17 A. No, no, no, not text messages, I don't know which  
18 format. Maybe he gave me --

19 Q. Oh.

20 A. -- something looking like this, or in bullet  
21 points, or with dates, and then he came with, I said not  
22 this, it came with something, a draft.

23 Q. Okay.

24 A. And then I made a final correction, saying I am not  
25 going to sign it as is because I think it is not correct

1 and then we arrive to this.

2 Q. Okay. So did you have any conversations with  
3 anyone other than Dr. Marsoner about his request prior  
4 to finalizing the letter?

5 MR. JOHNSON: Asked and answered.

6 A. Magnoni.

7 Q. What did you discuss with Magnoni?

8 A. No, he asked me what I recalled, whether we  
9 recalled the same thing and so on, because he was also  
10 lost in the decades; what happened? When did we  
11 repossess? Because he was following it from the outside  
12 he couldn't remember anything, the names of the people  
13 involved, who was who. And he said, you know, this is  
14 going to be, you know, potentially complicated. He  
15 doesn't have anything because he exited Lehman.  
16 I bought a business from Lehman, including the servers.  
17 He did not, so he was not privy of any of the  
18 information.

19 Q. Okay. I think we can move on.

20 You also submitted a letter on Dr. Marsoner's behalf  
21 to the joint administrators of Lehman Brothers Europe,  
22 correct?

23 A. Dated?

24 Q. I will get it for you.

25 A. Thanks.

1 Q. This document is stamped with LEH 1036. He needs  
2 to mark it first and then you will get it right back.

3 (Exhibit Pignatti 10 marked for identification)

4 Q. This letter is dated January 13, 2014, correct?

5 A. Yes.

6 Q. Okay. Is that your signature on the bottom?

7 A. Yes.

8 Q. Okay. This letter was submitted to Daniel  
9 Schwarzman, the joint administrator of Lehman Brothers  
10 Europe Limited in administration at  
11 PricewaterhouseCoopers, correct?

12 A. Yes.

13 Q. Okay. What I would like to do is focus on the last  
14 paragraph.

15 A. Mm-hm.

16 Q. You know what, let us start from the beginning.  
17 You say:

18 "I, Vittorio Pignatti, Chairman of Trilantic Capital  
19 Partners, former head of European M&A and Vice Chairman  
20 of Lehman Brothers hereby confirm that ..."

21 And then you lay out three paragraphs.

22 The first paragraph states:

23 "Dr. Marsoner provided at Lehman Brothers' request  
24 advice with regard to its investment in F1 and its  
25 beneficial realization.



1 "2. The advice was delivered not only in emails but  
2 also in oral discussions with Lehman staff, including  
3 myself.

4 "3. The advice was intended to be rewarded by  
5 Lehman Brothers on the basis of the beneficial outcome  
6 of steps taken or omitted to be taken on the basis of  
7 the advice."

8 Do you see that?

9 A. Yes.

10 Q. You submitted -- when you said in the third  
11 paragraph:

12 "The advice was intended to be rewarded by Lehman  
13 Brothers."

14 You were referring to Lehman Brothers Europe  
15 Limited?

16 MR. JOHNSON: Objection. Leading.

17 Q. Correct?

18 A. I was referring in my capacity.

19 Q. To Lehman Brothers Europe Limited?

20 MR. JOHNSON: Objection. Leading.

21 A. As I said before, corporate structures at Lehman  
22 Brothers were not my decision as to which company would  
23 be rewarding whom.

24 Q. Okay.

25 A. It was not within my domain to say that this

1           adviser will be booked on this P&L and so on, because  
2           these were things that were done by other departments.

3           Q.   Okay.  You submitted this letter to the joint  
4           administrators of Lehman Brothers Europe Limited,  
5           correct?

6           A.   Mm-hm, yes.

7           Q.   To support Dr. Marsoner's claim against Lehman  
8           Brothers Europe?

9           A.   I would assume so, yes.

10          Q.   Okay.  So Lehman Brothers Europe would compensate  
11          Dr. Marsoner for Formula 1, correct?

12   MR. JOHNSON:  Objection.  Asked and answered.

13          A.   Well, Formula 1 was on the books of Europe, which  
14          company I was not aware of, but certainly assumed that  
15          it was under the umbrella of Lehman Brothers Europe.

16          Q.   Well, you were submitting that so that Lehman  
17          Brothers Europe --

18          A.   Yes.

19          Q.   -- would compensate Dr. Marsoner for Formula 1?

20   MR. JOHNSON:  Objection.  Asked and answered.

21          A.   Because the asset was the European asset.

22          Q.   I missed it over the objection.  Was the answer  
23          yes?

24   MR. JOHNSON:  Asked and answered.

25          A.   Yes.

1 Q. Okay. How much were you compensated for your work  
2 on Formula 1?

3 A. I was paid as an executive of Lehman Brothers.

4 Q. Specifically for Formula 1?

5 A. No, no, no. I was not paid on success.

6 Q. So you were salaried?

7 A. Salary, bonus, shares, long term incentive plans  
8 and so on.

9 Q. Okay.

10 A. But none of the people, So the vice chairmen of  
11 Lehman were operating, unless you left the firm, in  
12 which case you would be remunerated with certain  
13 formulas like Mr. Marsoner and so on. But if you were  
14 an executive of the firm there was a sort of grade and  
15 a bonus structure and so on, but not linked to specific  
16 transactions.

17 Q. Okay. Dr. Marsoner settled his claim with Lehman  
18 Brothers Europe, correct?

19 MR. JOHNSON: Objection. Leading.

20 A. I have no idea.

21 Q. You don't know if Dr. Marsoner settled his claim  
22 with Lehman Brothers Europe?

23 MR. JOHNSON: Objection. Asked and answered.

24 A. No.

25 Q. Let us take out the exhibit.

1 A. Not that I remember.

2 Q. Okay, we will refresh your recollection.

3 A. What do you mean the claim, specifically on

4 Formula 1.

5 Q. Yes.

6 MR. JOHNSON: Objection.

7 A. I am not aware.

8 Q. Okay, we will refresh your recollection. It has

9 been marked already. It is exhibit 9.

10 A. In this one?

11 Q. Yes. Let us turn to Marsoner 24. In the center of

12 the page is an email from you to Dr. Marsoner

13 dated November 26, 2014. Do you see that?

14 A. Mm-hm.

15 Q. Your email states:

16 "Hi Thomas. What did you settle amicably with LBEL?

17 Look forward for you to win this one so you can invest

18 in our fund."

19 Do you see that?

20 A. Yes.

21 Q. So Dr. Marsoner settled his claim with

22 Lehman Brothers Europe, correct?

23 MR. JOHNSON: Objection. Leading.

24 A. Yes, I think what we -- the question you had asked

25 is whether I knew that he had settled vis-a-vis

1 Formula 1, which I do not know. I think he was, unlike  
2 me, I had no claims with Lehman Brothers, any Lehman  
3 Brothers. In his case he was an adviser so maybe he  
4 wasn't paid on certain things, which were, you know,  
5 invoices or his expenses and so on.

6 Q. Mm-hm.

7 A. And that is what I read this to be; that he had  
8 been paid for -- I mean I had many colleagues who were  
9 on an advisory contract who had matured relatively large  
10 sums, and had not been paid.

11 Q. Okay. But you knew that he had settled a claim  
12 with Lehman Brothers?

13 A. A claim.

14 MR. JOHNSON: Objection.

15 A. I thought it was his employee claim.

16 Q. Okay.

17 A. We are talking November 2014.

18 Q. Okay.

19 A. Okay, this is eight months after this. Correct?

20 Q. Yes.

21 A. Okay. So when I wrote this he had not, I assume,  
22 settled.

23 Q. When you had written exhibit 10?

24 A. Exhibit 10. I think I was not aware of anything.

25 Q. Okay.

1           A. Okay. So if your question was, I think your  
2           question was were you aware of anything? The answer  
3           remains no. Then a number of months later I was  
4           informed of what I thought were -- I mean it is  
5           business, he was asking for a favor, and he tells me  
6           that he has resolved the LBEL, which many of the people  
7           that I employ, as well, had claims, because they are  
8           salaries had not been paid, because their pension was  
9           wiped out and so on. So that is what I thought it was.

10          Q. Okay. So now that he had settled the claim,  
11          a claim, with LBEL, you were looking forward for him to  
12          invest in one of your funds?

13   MR. JOHNSON: Objection. Leading.

14          A. This is a humorous sentence in the sense that the  
15          smallest investor in my fund has, I think, 17 million  
16          Euros invested in the fund. You know what they say, you  
17          are a rich man, back on your feet post bankruptcy, not  
18          that I was actually counting on his personal  
19          contribution.

20          Q. Did he end up investing in one of your funds?

21   MR. JOHNSON: Objection.

22          A. No, we don't take individuals.

23          Q. And will you be compensated if he recovers from the  
24          US estate?

25          A. Absolutely not.

1 Q. What is M&M Capital Limited?

2 A. Marsoner --

3 MR. JOHNSON: Objection.

4 A. -- and Marsoner. I don't know how he came up with  
5 the name. It is an advisory company he has set up as  
6 his personal --

7 Q. Did do you know do any business with M&M Capital?

8 A. Er --

9 MR. JOHNSON: Objection.

10 A. -- no, although he does come up with investment  
11 ideas for my fund. We have not, I am not really focused  
12 with our fund on Austria and certainly not financial  
13 institutions which was his sort of --

14 Q. Does M&M Capital have him on retainer?

15 MR. JOHNSON: Objection. Form.

16 A. Does M&M Capital?

17 Q. I am sorry, I am confusing the entities. Have you  
18 retained at Trilantic, have you retained M&M Capital?

19 A. No.

20 Q. What is Mr. Magnoni's relationship with  
21 M&M Capital?

22 MR. JOHNSON: Objection. Form.

23 A. I think he is a partner, or was a partner.

24 Q. Do you have any other business relations with  
25 Dr. Marsoner?

1 A. No.

2 MR. JOHNSON: Objection. Form.

3 A. It is not other. I have no business relations  
4 with.

5 Q. Do you have a social relationship with  
6 Dr. Marsoner?

7 MR. JOHNSON: Objection.

8 A. Yes, we have known each other for 15 years and  
9 certainly I would not have, sort of agreed to establish  
10 the facts in this process if I did not have  
11 a relationship.

12 MS. ALVAREZ: Okay. I think we can go off the record and we  
13 would like to take a few minutes.

14 MR. JOHNSON: You are almost done?

15 MS. ALVAREZ: I think we might be, but I need to take a few  
16 minutes.

17 MR. JOHNSON: Okay.

18 THE VIDEOGRAPHER: We are going off the record. The time is  
19 7:12 p.m.

20 (7:12 p.m.)

21 (Break taken )

22 (7: 18 p.m.)

23 THE VIDEOGRAPHER: We are back on the record. The time is  
24 7:18 p.m.

25 MS. ALVAREZ: At this point Lehman Brothers has no further



1 questions.

2 BY MR. JOHNSON:

3 Q. I have a couple of additional questions for you,  
4 Mr. Pignatti.

5 Would it be normal to agree on a consultant's  
6 success fee before any profits were realized?

7 MS. ALVAREZ: Objection to form.

8 A. If the advice was accepted by the firm, or  
9 stipulated, yes. Or, rephrasing the question, did  
10 Lehman pay advisers on a percentage of profits in my  
11 20 years at Lehman Brothers? The answer is yes, many  
12 times.

13 Q. But would they pay before they had received any  
14 profits?

15 A. Would they be paid? No.

16 Q. I believe you testified earlier that you know  
17 Peter Sherratt?

18 A. Yes.

19 Q. Was Mr. Sherratt aware that success fees were paid?

20 MS. ALVAREZ: Objection to form.

21 A. Absolutely.

22 Q. Even where there was no agreement covering the  
23 transaction?

24 MS. ALVAREZ: Objection to form.

25 A. No. I think I said earlier that no payment was

1 ever done unless there was a documented agreement. So  
2 especially substantial amounts, which were not just  
3 reimbursements of expenses or reimbursements of expenses  
4 but anything formulaic, based on a success would be  
5 either regulated by a framework agreement to which  
6 an addendum would be done, specifying and for this  
7 transaction we have decided to pay the following amount,  
8 but it would be a documented amount.

9 Q. And on Dr. Marsoner's F1 advice, isn't it true that  
10 such an addendum wouldn't have been made until profits  
11 were realized?

12 MS. ALVAREZ: Objection to form.

13 A. It could have been done before or after. As you  
14 see, an email that was previously shown from me to our  
15 colleagues on the fund side, you know, the transaction  
16 had already been done. Which is subsequent to the BAWAG  
17 advisory. A transaction was also originated for another  
18 department in the absence of any sort of documentation  
19 and so on, because the marginal cost to the adviser who  
20 was working on a bigger transaction to channel a piece  
21 of business to our funds would not have probably merited  
22 a pre-approval by that division. So the adviser took  
23 the risk of sort of notifying his will or his request at  
24 a later stage and it was approved. So you have  
25 an example of that.

1 Q. And on BAWAG -- let me restate. Is BAWAG included  
2 in any of Dr. Marsoner's agreements?

3 A. Yes. But the advisory piece was included in  
4 an existing agreement. The amount of my email, the  
5 300,000 to 400,000 and so on, would not have been  
6 specifically covered in that agreement and therefore  
7 I asked the proper department to include it in to a --  
8 you know, otherwise I couldn't have paid the amount.

9 Q. Can you point to where Cerberus' acquisition of  
10 BAWAG is included in Dr. Marsoner's agreements?

11 A. It is either in the 2004, it should be. I believe  
12 it is this BWBG.

13 MS. ALVAREZ: What exhibit are you referring to, so that it  
14 is clear?

15 A. I am not looking at an exhibit, but it is the  
16 Lehman Brothers advisory contract that I signed, dated  
17 13 February 2004.

18 MS. ALVAREZ: Mm-hm. Thank you.

19 BY MR. JOHNSON:

20 Q. Where are you looking at on that?

21 A. I am looking at page 66.3 VII. But I may be wrong  
22 and that is not the one and that was done by --

23 Q. That doesn't say Cerberus anywhere, does it?

24 A. No, but I read Cerberus somewhere.

25 Q. Could it be that it wasn't included?

1 A. Well, if we don't find it then it wasn't included.

2 But I remember that he was paid --

3 Q. Right.

4 A. -- and it was officially documented.

5 Q. Okay.

6 A. But I can't remember if it was in one of the  
7 contracts, or under the catch all was then included --

8 Q. Okay.

9 A. -- to one of the contracts.

10 Q. So it may have been in a catch all provision?

11 A. Yes, because as I explained, the way that we used  
12 to work was to list, you know, normally they would be  
13 renewed in February, whatever it was live in February,  
14 and I don't remember when BAWAG came out, you know. So  
15 it would have been included in the following or sort of  
16 an email circulated among the decision makers, saying as  
17 per this adviser's retainer, should the BAWAG deal  
18 happen X percent will be paid.

19 Q. Okay. Could you refer back to the declaration, of  
20 Dr. Thomas Marsoner?

21 MS. ALVAREZ: Which is exhibit 4.

22 BY MR. JOHNSON:

23 Q. Turn to paragraph 8, which I believe we discussed  
24 before.

25 A. In 2005 I advised Lehman?

1 Q. Correct.

2 A. Mm-hm.

3 Q. And we looked at the sentence that says:

4 "Lehman agreed both orally and by email to this fee  
5 in exchange for my F1 advice."

6 A. Yes.

7 Q. Is it possible that he agreed that fee with someone  
8 else besides you?

9 MS. ALVAREZ: Objection to form.

10 A. It is possible. I can confirm that he did provide  
11 assistance, some of it in the period of 2002 but prior  
12 to sort of 2005, relating to the investment banking  
13 aspects. But they wouldn't have been at the time my  
14 sort of duty. To negotiate --

15 Q. And do you -- sorry.

16 A. To negotiate the 10 percent and X percent, and so  
17 on.

18 Q. Right.

19 We also talked about the dividend recap in 2006. Do  
20 you remember this discussion earlier?

21 A. I remember the discussion, yes.

22 Q. But you weren't involved in F1 at that point any  
23 more?

24 MS. ALVAREZ: Objection to form.

25 A. No.

1 Q. So you don't know about profits that might or might  
2 not have resulted?

3 MS. ALVAREZ: Objection to form.

4 A. No.

5 Q. And lastly could we turn back to your letter to the  
6 court?

7 A. Mm-hm.

8 MS. ALVAREZ: Are we talking exhibit 2?

9 MR. JOHNSON: I think it has been marked as multiple  
10 exhibits.

11 MS. ALVAREZ: I just want to make sure it is clear for the  
12 record what we are looking at.

13 A. Yes.

14 BY MR. JOHNSON:

15 Q. Is it correct that the first sentence says:

16 "I declare under penalty of perjury under the laws  
17 of The United States of America that the foregoing is  
18 true and correct."

19 A. Yes.

20 Q. Is everything in this letter true and correct?

21 A. Yes.

22 Q. And have you slanted your testimony in favor of  
23 Dr. Marsoner today?

24 MS. ALVAREZ: Objection to form.

25 A. Have I slanted?

1 Q. Have you provided testimony in favor of  
2 Dr. Marsoner or have you told the truth?

3 A. I have told the truth.

4 MR. JOHNSON: Those are all my questions.

5 MS. ALVAREZ: Okay, I think we are done but let me just take  
6 two minutes just to confirm.

7 THE VIDEOGRAPHER: We are going off the record. The time is  
8 7: 30 p.m.

9 (7:30 p.m.)

10 (Break taken.)

11 (7:31 p.m.)

12 THE VIDEOGRAPHER: We are back on the record. The time is  
13 7:31 p.m.

14 MS. ALVAREZ: Lehman also has no further questions right now  
15 for Mr. Pignatti.

16 I would like to state on the record that this  
17 deposition and the testimony given during this  
18 deposition shall remain confidential. Shall not be  
19 discussed with third parties. This is pursuant to  
20 paragraphs 8 and 9 of the protective order that was  
21 entered by the Bankruptcy Court, docket number 50584.

22 Once the parties receive the final version of the  
23 transcript we shall have ten days to designate certain  
24 portions confidential if we so choose. But before that  
25 time period has been completed the entire, all of the

1 testimony provided here by Mr. Pignatti shall be  
2 confidential.

3 MR. JOHNSON: Okay.

4 THE VIDEOGRAPHER: Okay. This concludes the deposition. We  
5 are going off the record. The time is 7:32 p.m.

6 (7:32 p.m.)

7 (Whereupon, the deposition concluded at 7:32 p.m.)

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CERTIFICATE OF DEPONENT

I, VITTORIO PIGNATTI, hereby certify that I have read the foregoing pages, numbered 1 through 136, of my deposition of testimony taken in these proceedings on Monday, November 16th, 2015 and, with the exception of the changes listed on the next page and/or corrections, if any, find them to be a true and accurate transcription thereof.

Signed: .....  
Name: VITTORIO PIGNATTI  
Date: .....

1 CERTIFICATE OF REPORTER

2 STATE OF NEW YORK )

3 ss )

4 COUNTY OF NEW YORK )

5

6 I, Chris Lang, an Accredited Real-time Reporter,  
7 do hereby certify:

8 That VITTORIO PIGNATTI, the witness whose deposition is  
9 hereinbefore set forth, was duly sworn by me and that such  
10 deposition is a true record of the testimony given by the  
11 witness.

12 I further certify that I am not related to any of  
13 the parties to this action by blood or marriage, and that I  
14 am in no way interested in the outcome of this matter.

15 IN WITNESS WHEREOF, I have hereunto set my hand  
16 this 16th day of November, 2015.

17

18

19

20 \_\_\_\_\_  
Chris Lang

21

22

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1 ERRATA SHEET

2 Case Name: Re: Lehman Brothers Holdings Inc.  
3 Witness Name: VITTORIO PIGNATTI  
4 Date: 11/16/15

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21 Subscribed and sworn to before  
22 me this date       day of month       , 2015

23 \_\_\_\_\_

24 VITTORIO PIGNATTI

25

<b>A</b>				
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